

SOCIAL SECURITY PROTECTION ACT OF 2003

MARCH 24, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means,
submitted the following

R E P O R T

[To accompany H.R. 743]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 743) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

| | Page |
|--|------|
| I. Summary and Background | 23 |
| A. Purpose and Summary | 23 |
| B. Background and Need for Legislation | 24 |
| C. Legislative History | 25 |
| II. Explanation of the Bill | 27 |
| Title I. Protection of Beneficiaries | 27 |
| Subtitle A—Representative Payees | 27 |
| A. Authority to reissue benefits misused by organizational representative payees (sec. 101 of the bill) | 27 |
| B. Oversight of representative payees (sec. 102 of the bill) | 28 |
| C. Disqualification from service as representative payee of persons convicted of offenses resulting in imprisonment for more than 1 year, or fleeing prosecution, custody, or confinement (sec. 103 of the bill) | 29 |
| D. Fee forfeiture in case of benefit misuse by representative payees (sec. 104 of the bill) | 30 |
| E. Liability of representative payees for misused benefits (sec. 105 of the bill) | 31 |
| F. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting (sec. 106 of the bill) | 31 |

| | |
|---|----|
| Subtitle B—Enforcement | 32 |
| G. Civil monetary penalty authority with respect to wrongful conversions by representative payees (sec. 111 of the bill) | 32 |
| Title II. Program Protections | 33 |
| A. Civil monetary penalty authority with respect to knowing withholding of material facts (sec. 201 of the bill) | 33 |
| B. Issuance by Commissioner of Social Security of receipts to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries (sec. 202 of the bill) | 34 |
| C. Denial of Title II benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole (sec. 203 of the bill) | 35 |
| D. Requirements relating to offers to provide for a fee a product or service available without charge from the Social Security Administration (sec. 204 of the bill) | 36 |
| E. Refusal to recognize certain individuals as claimant representatives (sec. 205 of the bill) | 37 |
| F. Penalty for corrupt or forcible interference with administration of Social Security Act (sec. 206 of the bill) | 38 |
| G. Use of symbols, emblems, or names in reference to Social Security or Medicare (sec. 207 of the bill) | 39 |
| H. Disqualification from payment during trial work period upon conviction of fraudulent concealment of work activity (sec. 208 of the bill) | 40 |
| I. Authority for judicial orders of restitution (sec. 209 of the bill) | 41 |
| Title III. Attorney Fee Payment System Improvements | 42 |
| A. Cap on attorney assessments (sec. 301 of the bill) | 42 |
| B. Extension of attorney fee payment system to Title XVI claims (sec. 302 of the bill) | 42 |
| Title IV. Miscellaneous and Technical Amendments | 43 |
| Subtitle A—Amendments relating to the Ticket to Work and Work Incentives Improvement Act of 1999 | 43 |
| A. Application of demonstration authority sunset date to new projects (sec. 401 of the bill) | 43 |
| B. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings (sec. 402 of the bill) | 44 |
| C. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings (sec. 403 of the bill) | 45 |
| D. Availability of Federal and State work incentive services to additional individuals (sec. 404 of the bill) | 46 |
| E. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program (sec. 405 of the bill) | 47 |
| Subtitle B—Miscellaneous Amendments | 49 |
| F. Elimination of transcript requirement in remand cases fully favorable to the claimant (sec. 411 of the bill) | 49 |
| G. Nonpayment of benefits upon removal from the United States (sec. 412 of the bill) | 49 |
| H. Reinstatement of certain reporting requirements (sec. 413 of the bill) | 50 |
| I. Clarification of definitions regarding certain survivor benefits (sec. 414 of the bill) | 50 |
| J. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner (sec. 415 of the bill) | 51 |
| K. Coverage under divided retirement system for public employees in Kentucky (sec. 416 of the bill) | 52 |
| L. Compensation for the Social Security Advisory Board (sec. 417 of the bill) | 53 |
| M. 60-month period of employment requirement for application of government pension offset exemption (sec. 418 of the bill) | 54 |
| Subtitle C—Technical Amendments | 55 |
| N. Technical correction relating to responsible agency head (sec. 421 of the bill) | 55 |
| O. Technical correction relating to retirement benefits of ministers (sec. 422 of the bill) | 56 |

| | |
|---|----|
| P. Technical corrections relating to domestic employment (sec. 423 of the bill) | 56 |
| Q. Technical corrections of outdated references (sec. 424 of the bill) .. | 57 |
| R. Technical correction respecting self-employment income in community property States (sec. 425 of the bill) | 57 |
| III. Votes of the Committee | 58 |
| IV. Budget Effects of the Bill | 60 |
| A. Committee Estimate of Budgetary Effects | 60 |
| B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority | 60 |
| C. Cost Estimate Prepared by the Congressional Budget Office | 60 |
| D. Macroeconomic Impact Analysis | 70 |
| V. Other Matters To Be Discussed Under the Rules of the House | 70 |
| A. Committee Oversight Findings and Recommendations | 70 |
| B. Statement of General Performance Goals and Objectives | 70 |
| C. Constitutional Authority Statement | 70 |
| D. Information Relating to Unfunded Mandates | 71 |
| E. Applicability of House Rule XXI 5(b) | 71 |
| F. Tax Complexity Analysis | 71 |
| VI. Changes in Existing Law Made by the Bill, as Reported | 71 |

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Social Security Protection Act of 2003”.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

- Sec. 101. Authority to reissue benefits misused by organizational representative payees.
- Sec. 102. Oversight of representative payees.
- Sec. 103. Disqualification from service as representative payee of persons convicted of offenses resulting in imprisonment for more than 1 year or fleeing prosecution, custody, or confinement.
- Sec. 104. Fee forfeiture in case of benefit misuse by representative payees.
- Sec. 105. Liability of representative payees for misused benefits.
- Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.

Subtitle B—Enforcement

- Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees.

TITLE II—PROGRAM PROTECTIONS

- Sec. 201. Civil monetary penalty authority with respect to knowing withholding of material facts.
- Sec. 202. Issuance by Commissioner of Social Security of receipts to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries.
- Sec. 203. Denial of title II benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole.
- Sec. 204. Requirements relating to offers to provide for a fee a product or service available without charge from the Social Security Administration.
- Sec. 205. Refusal to recognize certain individuals as claimant representatives.
- Sec. 206. Penalty for corrupt or forcible interference with administration of Social Security Act.
- Sec. 207. Use of symbols, emblems, or names in reference to social security or medicare.
- Sec. 208. Disqualification from payment during trial work period upon conviction of fraudulent concealment of work activity.
- Sec. 209. Authority for judicial orders of restitution.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

- Sec. 301. Cap on attorney assessments.
- Sec. 302. Extension of attorney fee payment system to title XVI claims.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

- Sec. 401. Application of demonstration authority sunset date to new projects.
- Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings.
- Sec. 403. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings.
- Sec. 404. Availability of Federal and State work incentive services to additional individuals.
- Sec. 405. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program.

Subtitle B—Miscellaneous Amendments

- Sec. 411. Elimination of transcript requirement in remand cases fully favorable to the claimant.

Sec. 412. Nonpayment of benefits upon removal from the United States.
 Sec. 413. Reinstatement of certain reporting requirements.
 Sec. 414. Clarification of definitions regarding certain survivor benefits.
 Sec. 415. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner.
 Sec. 416. Coverage under divided retirement system for public employees in Kentucky.
 Sec. 417. Compensation for the Social Security Advisory Board.
 Sec. 418. 60-month period of employment requirement for application of government pension offset exemption.

Subtitle C—Technical Amendments

Sec. 421. Technical correction relating to responsible agency head.
 Sec. 422. Technical correction relating to retirement benefits of ministers.
 Sec. 423. Technical corrections relating to domestic employment.
 Sec. 424. Technical corrections of outdated references.
 Sec. 425. Technical correction respecting self-employment income in community property States.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following new sentences: “In any case in which a representative payee that—

“(A) is not an individual (regardless of whether it is a ‘qualified organization’ within the meaning of paragraph (4)(B)); or

“(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).”

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following new paragraph:

“(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ‘use and benefit’ for purposes of this paragraph.”

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) (as amended by section 209(b)(1) of this Act) is amended further by inserting after the first sentence the following new sentences: “In any case in which a representative payee that—

“(A) is not an individual; or

“(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (1)(2).”

(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following new subsection:

“(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ‘use and benefit’ for purposes of this subsection.”

(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking “for his or her benefit” and inserting “for his or her use and benefit”.

(c) TITLE XVI AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following new sentences: “In any case in which a representative payee that—

“(i) is not an individual (regardless of whether it is a ‘qualified organization’ within the meaning of subparagraph (D)(ii)); or

“(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual’s benefit paid to the representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).”.

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking “and” at the end;

(B) in paragraph (13), by striking the period and inserting “; and”; and

(C) by inserting after paragraph (13) the following new paragraph:

“(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual’s (or spouse’s) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.”.

(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following new clause:

“(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ‘use and benefit’ for purposes of this clause.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.—

(1) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking “a community-based nonprofit social service agency licensed or bonded by the State” in subclause (I) and inserting “a certified community-based nonprofit social service agency (as defined in paragraph (9))”;

(B) in paragraph (3)(F), by striking “community-based nonprofit social service agencies” and inserting “certified community-based nonprofit social service agencies (as defined in paragraph (9))”;

(C) in paragraph (4)(B), by striking “any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee” and inserting “any certified community-based nonprofit social service agency (as defined in paragraph (9))”; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following new paragraph:

“(9) For purposes of this subsection, the term ‘certified community-based nonprofit social service agency’ means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in such State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on such agency which may have been performed since the previous certification.”.

(2) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking “a community-based nonprofit social service agency licensed or bonded by the State” in subclause (I) and in-

serting “a certified community-based nonprofit social service agency (as defined in subparagraph (I))”;

(B) in subparagraph (D)(ii)—

(i) by striking “or any community-based” and all that follows through “in accordance” in subclause (II) and inserting “or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance”;

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margination accordingly); and

(iii) by striking “subclause (II)(bb)” and inserting “subclause (II)”; and

(C) by adding at the end the following new subparagraph:

“(I) For purposes of this paragraph, the term ‘certified community-based nonprofit social service agency’ means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(b) PERIODIC ONSITE REVIEW.—

(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

“(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

“(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

“(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

“(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

“(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

“(i) the number of such reviews;

“(ii) the results of such reviews;

“(iii) the number of cases in which the representative payee was changed and why;

“(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

“(v) the number of cases discovered in which there was a misuse of funds;

“(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

“(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

“(viii) such other information as the Commissioner deems appropriate.”.

(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following new subsection:

“(k) PERIODIC ONSITE REVIEW.—(1) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency

that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

“(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

“(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

“(2) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

“(A) the number of such reviews;

“(B) the results of such reviews;

“(C) the number of cases in which the representative payee was changed and why;

“(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

“(E) the number of cases discovered in which there was a misuse of funds;

“(F) how any such cases of misuse of funds were dealt with by the Commissioner;

“(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

“(H) such other information as the Commissioner deems appropriate.”.

(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

“(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

“(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

“(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

“(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

“(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

“(I) the number of the reviews;

“(II) the results of such reviews;

“(III) the number of cases in which the representative payee was changed and why;

“(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

“(V) the number of cases discovered in which there was a misuse of funds;

“(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

“(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

“(VIII) such other information as the Commissioner deems appropriate.”.

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR OR FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT.

(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking “and” at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

“(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

“(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and”;

(2) in subparagraph (B), by adding at the end the following new clause:

“(iii) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

“(I) such person is described in section 202(x)(1)(A)(iv),

“(II) such person has information that is necessary for the officer to conduct the officer’s official duties, and

“(III) the location or apprehension of such person is within the officer’s official duties.”;

(3) in subparagraph (C)(i)(II), by striking “subparagraph (B)(i)(IV),” and inserting “subparagraph (B)(i)(VI)” and striking “section 1631(a)(2)(B)(ii)(IV)” and inserting “section 1631(a)(2)(B)(ii)(VI)”;

(4) in subparagraph (C)(i)—

(A) by striking “or” at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following new subclauses:

“(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

“(V) such person is person described in section 202(x)(1)(A)(iv).”.

(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking “and” at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following new subparagraphs:

“(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

“(E) obtain information concerning whether such person is a person described in section 804(a)(2); and”;

(2) in subsection (b), by adding at the end the following new paragraph:

“(3) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

“(A) such person is described in section 804(a)(2),

“(B) such person has information that is necessary for the officer to conduct the officer’s official duties, and

“(C) the location or apprehension of such person is within the officer’s official duties.”; and

(3) in subsection (d)(1)—

- (A) by striking “or” at the end of subparagraph (B);
- (B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and
- (C) by adding at the end the following new subparagraphs:
 - “(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or
 - “(E) such person is a person described in section 804(a)(2).”.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

- (A) by striking “and” at the end of subclause (III);
- (B) by redesignating subclause (IV) as subclause (VI); and
- (C) by inserting after subclause (III) the following new subclauses:
 - “(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;
 - “(V) obtain information concerning whether such person is a person described in section 1611(e)(4)(A); and”;

(2) in clause (iii)(II)—

- (A) by striking “clause (ii)(IV)” and inserting “clause (ii)(VI)”; and
- (B) by striking “section 205(j)(2)(B)(i)(IV)” and inserting “section 205(j)(2)(B)(i)(VI)”;

(3) in clause (iii)—

- (A) by striking “or” at the end of subclause (II);
- (B) by striking the period at the end of subclause (III) and inserting a semicolon; and
- (C) by adding at the end the following new subclauses:
 - “(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or
 - “(V) such person is a person described in section 1611(e)(4)(A).”; and

(4) by adding at the end the following new clause:

“(xiv) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

“(I) such person is described in section 1611(e)(4)(A),

“(II) such person has information that is necessary for the officer to conduct the officer’s official duties, and

“(III) the location or apprehension of such person is within the officer’s official duties.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(e) REPORT TO THE CONGRESS.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking “A” and inserting “Except as provided in the next sentence, a”; and

(2) in the second sentence, by striking “The Secretary” and inserting the following:

“A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual’s benefit for purposes of paragraphs (5) and (6). The Commissioner”.

(b) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking “A” and inserting “Except as provided in the next sentence, a”; and

(2) in the second sentence, by striking “The Commissioner” and inserting the following: “A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual’s benefit for purposes of subparagraphs (E) and (F). The Commissioner”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking “paragraph (9)” and inserting “paragraph (10)”;

(3) in paragraph (6)(A)(ii), by striking “paragraph (9)” and inserting “paragraph (10)”;

(4) by inserting after paragraph (6) the following new paragraph:

“(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual’s benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual’s alternative representative payee.

“(B) The total of the amount certified for payment to such individual or such individual’s alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.”.

(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following new subsection:

“(1) LIABILITY FOR MISUSED AMOUNTS.—

“(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual’s benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual’s alternative representative payee.

“(2) LIMITATION.—The total of the amount paid to such individual or such individual’s alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.”.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

(1) in subparagraph (G)(i)(II), by striking “section 205(j)(9)” and inserting “section 205(j)(10)”; and

(2) by striking subparagraph (H) and inserting the following:

“(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual’s benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual’s alternative representative payee.

“(ii) The total of the amount paid to such individual or such individual’s alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) **TITLE II AMENDMENTS.**—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.”

(b) **TITLE VIII AMENDMENTS.**—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) **AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.**—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.”

(c) **TITLE XVI AMENDMENT.**—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following new clause:

“(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.”

(d) **EFFECTIVE DATE.**—The amendment made by this section shall take effect 180 days after the date of the enactment of this Act.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) **IN GENERAL.**—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following new paragraph:

“(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to violations committed after the date of the enactment of this Act.

TITLE II—PROGRAM PROTECTIONS

SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO KNOWING WITHHOLDING OF MATERIAL FACTS.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking “who” in the first sentence and inserting “who—”;

(B) by striking “makes” in the first sentence and all that follows through “shall be subject to,” and inserting the following:

“(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

“(B) makes such a statement or representation for such use with knowing disregard for the truth, or

“(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,”;

(C) by inserting “or each receipt of such benefits or payments while withholding disclosure of such fact” after “each such statement or representation” in the first sentence;

(D) by inserting “or because of such withholding of disclosure of a material fact” after “because of such statement or representation” in the second sentence; and

(E) by inserting “or such a withholding of disclosure” after “such a statement or representation” in the second sentence.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—Section 1129A(a) of such Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking “who” the first place it appears and inserting “who—”;

(B) by striking “makes” and all that follows through “shall be subject to,” and inserting the following:

“(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI that the person knows or should know is false or misleading,

“(2) makes such a statement or representation for such use with knowing disregard for the truth, or

“(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,”.

(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking “In the case of amounts recovered arising out of a determination relating to title VIII or XVI,” and inserting “In the case of any other amounts recovered under this section,”.

(c) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking “charging fraud or false statements”.

(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking “and representations” and inserting “, representations, or actions”.

(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking “statement or representation referred to in subsection (a) was made” and inserting “violation occurred”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the date on which the Commissioner implements the centralized computer file described in section 202.

SEC. 202. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary’s work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

SEC. 203. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking “Prisoners” and all that follows and inserting the following: “Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees”;

(2) in paragraph (1)(A)(ii)(IV), by striking “or” at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

“(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State, or

“(v) is violating a condition of probation or parole imposed under Federal or State law.

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv) or (v), the Commissioner may, for good cause shown, pay such withheld benefits to the individual.”; and

(5) in paragraph (3), by adding at the end the following new subparagraph:

“(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

“(i) the beneficiary—

“(I) is described in clause (iv) or (v) of paragraph (1)(A); and

“(II) has information that is necessary for the officer to conduct the officer’s official duties; and

“(ii) the location or apprehension of the beneficiary is within the officer’s official duties.”.

(b) REGULATIONS.—Not later than the first day of the first month that begins on or after the date that is 9 months after the date of the enactment of this Act, the Commissioner of Social Security shall promulgate regulations governing payment by the Commissioner, for good cause shown, of withheld benefits, pursuant to the last sentence of section 202(x)(1)(A) of the Social Security Act (as amended by subsection (a)).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of the enactment of this Act.

SEC. 204. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

“(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

“(i) explains that the product or service is available free of charge from the Social Security Administration, and

“(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

“(B) Subparagraph (A) shall not apply to any offer—

“(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

“(ii) to prepare, or assist in the preparation of, an individual’s plan for achieving self-support under title XVI.”; and

(2) in the heading, by striking “PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE” and inserting “PROHIBITIONS RELATING TO REFERENCES”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act.

SEC. 205. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: “Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.”.

SEC. 206. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following new section:

“ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

“SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than \$5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than \$3,000, imprisoned not more than 1 year, or both. In this subsection, the term ‘threats of force’ means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.”.

SEC. 207. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) **IN GENERAL.**—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting “ ‘Centers for Medicare & Medicaid Services,’ ” after “ ‘Health Care Financing Administration,’ ”, by striking “or ‘Medicaid,’ ” and inserting “ ‘Medicaid,’ ‘Death Benefits Update,’ ‘Federal Benefit Information,’ ‘Funeral Expenses,’ or ‘Final Supplemental Plan,’ ” and by inserting “ ‘CMS,’ ” after “ ‘HCFA,’ ”;

(2) in subparagraph (B), by inserting “Centers for Medicare & Medicaid Services,” after “Health Care Financing Administration,” each place it appears; and

(3) in the matter following subparagraph (B), by striking “the Health Care Financing Administration,” each place it appears and inserting “the Centers for Medicare & Medicaid Services,”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to items sent after 180 days after the date of the enactment of this Act.

SEC. 208. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

(a) **IN GENERAL.**—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following new paragraph:

“(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

“(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

“(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

“(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

SEC. 209. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION.

(a) **AMENDMENTS TO TITLE II.**—Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection:

“(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

“(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Social Security Administration shall be considered the victim.

“(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.”.

(b) **AMENDMENTS TO TITLE VIII.**—Section 807(i) of such Act (42 U.S.C. 1007(i)) is amended—

(1) by striking “(i) **RESTITUTION.**—In any case where” and inserting the following:

“(i) **RESTITUTION.**—

“(1) **IN GENERAL.**—In any case where”; and

(2) by adding at the end the following new paragraph:

“(2) **COURT ORDER FOR RESTITUTION.**—

“(A) **IN GENERAL.**—Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in

lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

“(B) RELATED PROVISIONS.—Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this paragraph. In so applying such sections, the Social Security Administration shall be considered the victim.

“(C) STATED REASONS FOR NOT ORDERING RESTITUTION.—If the court does not order restitution, or orders only partial restitution, under this paragraph, the court shall state on the record the reasons therefor.”.

(c) AMENDMENTS TO TITLE XVI.—Section 1632 of such Act (42 U.S.C. 1383a) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

“(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

“(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Social Security Administration shall be considered the victim.

“(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.”.

(d) SPECIAL ACCOUNT FOR RECEIPT OF RESTITUTION PAYMENTS.—Section 704(b) of such Act (42 U.S.C. 904(b)) is amended by adding at the end the following new paragraph:

“(3)(A) Except as provided in subparagraph (B), amounts received by the Social Security Administration pursuant to an order of restitution under section 208(b), 807(i), or 1632(b) shall be credited to a special fund established in the Treasury of the United States for amounts so received or recovered. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out titles II, VIII, and XVI.

“(B) Subparagraph (A) shall not apply with respect to amounts received in connection with misuse by a representative payee (within the meaning of sections 205(j), 807, and 1631(a)(2)) of funds paid as benefits under title II, VIII, or XVI. Such amounts received in connection with misuse of funds paid as benefits under title II shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund. All other such amounts shall be deposited by the Commissioner into the general fund of the Treasury as miscellaneous receipts.”.

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to violations occurring on or after the date of the enactment of this Act.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by inserting “, except that the maximum amount of the assessment may not exceed the greater of \$75 or the adjusted amount as provided pursuant to the following two sentences” after “subparagraph (B)”; and

(2) by adding at the end the following new sentence: “In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified

or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act.

SEC. 302. EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.

(a) IN GENERAL.—Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—

(A) by striking “section 206(a)” and inserting “section 206”;

(B) by striking “(other than paragraph (4) thereof)” and inserting “(other than subsections (a)(4) and (d) thereof)”; and

(C) by striking “paragraph (2) thereof” and inserting “such section”;

(2) in subparagraph (A)(i), by striking “in subparagraphs (A)(ii)(I) and (C)(i),” and inserting “in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)”, and by striking “and” at the end;

(3) by striking subparagraph (A)(ii) and inserting the following:

“(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase ‘section 1631(a)(7)(A) or the requirements of due process of law’ for the phrase ‘subsection (g) or (h) of section 223’;

“(iii) by substituting, in subsection (a)(2)(C)(i), the phrase ‘under title II’ for the phrase ‘under title XVI’;

“(iv) by substituting, in subsection (b)(1)(A), the phrase ‘pay the amount of such fee’ for the phrase ‘certify the amount of such fee for payment’ and by striking, in subsection (b)(1)(A), the phrase ‘or certified for payment’; and

“(v) by substituting, in subsection (b)(1)(B)(ii), the phrase ‘deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)’ for the phrase ‘determined before any applicable reduction under section 1127(a)’.”; and

(4) by striking subparagraph (B) and inserting the following new subparagraphs:

“(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

“(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

“(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

“(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant’s past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

“(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative’s fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed \$75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.

“(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

“(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant’s past-due benefits.

“(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

“(v) Assessments on attorneys collected under this subparagraph shall be deposited in the Treasury in a separate fund created for this purpose.

“(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 1631(d)(2) of the Social Security Act on or after the first day of the first month that begins after 270 days after the date of the enactment of this Act.

(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date on which the Commissioner of Social Security first implements the amendments made by this section.

(c) STUDY REGARDING FEE-WITHHOLDING FOR NON-ATTORNEY REPRESENTATIVES.—

(1) STUDY.—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study regarding fee-withholding for non-attorney representatives representing claimants before the Social Security Administration.

(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall—

(A) compare the non-attorney representatives who seek fee approval for representing claimants before the Social Security Administration to attorney representatives who seek such fee approval, with regard to—

- (i) their training, qualifications, and competency,
- (ii) the type and quality of services provided, and

(iii) the extent to which claimants are protected through oversight of such representatives by the Social Security Administration or other organizations, and

(B) consider the potential results of extending to non-attorney representatives the fee withholding procedures that apply under titles II and XVI of the Social Security Act for the payment of attorney fees, including the effect on claimants and program administration.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the results of the Comptroller General’s study conducted pursuant to this subsection.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking “conducted under subsection (a)” and inserting “initiated under subsection (a) on or before December 17, 2004”; and

(2) in subsection (d)(2), by amending the first sentence to read as follows: “The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2004.”.

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking “(42 U.S.C. 401 et seq.),” and inserting “(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,”.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDED FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

“(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.”.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) **FEDERAL WORK INCENTIVES OUTREACH PROGRAM.**—

(1) **IN GENERAL.**—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

“(2) **DISABLED BENEFICIARY.**—The term ‘disabled beneficiary’ means an individual—

“(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

“(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

“(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

“(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.”.

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act.

(b) **STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.**—

(1) **DEFINITION OF DISABLED BENEFICIARY.**—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

“(2) **DISABLED BENEFICIARY.**—The term ‘disabled beneficiary’ means an individual—

“(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

“(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

“(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

“(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.”.

(2) **ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.**—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking “secure or regain” and inserting “secure, maintain, or regain”.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply with respect to payments provided after the date of the enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) **IN GENERAL.**—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19) is amended by adding at the end, after and below subparagraph (E), the following new sentence:

“An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) **IN GENERAL.**—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking “and a transcript” and inserting “and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) **IN GENERAL.**—Paragraphs (1) and (2) of section 202(n) of the Social Security Act (42 U.S.C. 402(n)(1), (2)) are each amended by striking “or (1)(E)”.

(b) **EFFECTIVE DATE.**—The amendment made by this section to section 202(n)(1) of the Social Security Act shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice from the Attorney General after the date of the enactment of this Act. The amendment made by this section to section 202(n)(2) of the Social Security Act shall apply with respect to removals occurring after the date of the enactment of this Act.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

- (1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).
- (B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).
- (C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).
- (2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).
- (B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) **WIDOWS.**—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

- (1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;
- (2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;
- (3) in clause (E) (as redesignated), by inserting “except as provided in paragraph (2),” before “she was married”;
- (4) by inserting “(1)” after “(c)”; and
- (5) by adding at the end the following new paragraph:

“(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

 - “(A) the individual had been married prior to the individual’s marriage to the surviving wife,
 - “(B) the prior wife was institutionalized during the individual’s marriage to the prior wife due to mental incompetence or similar incapacity,
 - “(C) during the period of the prior wife’s institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife’s institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),
 - “(D) the prior wife continued to remain institutionalized up to the time of her death, and
 - “(E) the individual married the surviving wife within 60 days after the prior wife’s death.”.

(b) **WIDOWERS.**—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

- (1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;
- (2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

- (3) in clause (E) (as redesignated), by inserting “except as provided in paragraph (2),” before “he was married”;
 - (4) by inserting “(1)” after “(g)”; and
 - (5) by adding at the end the following new paragraph:
 - “(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—
 - “(A) the individual had been married prior to the individual’s marriage to the surviving husband,
 - “(B) the prior husband was institutionalized during the individual’s marriage to the prior husband due to mental incompetence or similar incapacity,
 - “(C) during the period of the prior husband’s institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband’s institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),
 - “(D) the prior husband continued to remain institutionalized up to the time of his death, and
 - “(E) the individual married the surviving husband within 60 days after the prior husband’s death.”
- (c) **CONFORMING AMENDMENT.**—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking “clause (5) of subsection (c) or clause (5) of subsection (g)” and inserting “clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)”.
- (d) **EFFECTIVE DATE.**—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of the enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking “to taxes or contributions for similar purposes under” and inserting “exclusively to the laws applicable to”.

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY.

(a) **IN GENERAL.**—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting “Kentucky,” after “Illinois,”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) **IN GENERAL.**—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

“Compensation, Expenses, and Per Diem

“(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall be effective as of January 1, 2003.

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) **WIFE’S INSURANCE BENEFITS.**—Section 202(b)(4)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A)) is amended by striking “if, on” and inserting “if, during any portion of the last 60 months of such service ending with”.

(b) **HUSBAND’S INSURANCE BENEFITS.**—Section 202(c)(2)(A) of such Act (42 U.S.C. 402(c)(2)(A)) is amended by striking “if, on” and inserting “if, during any portion of the last 60 months of such service ending with”.

(c) **WIDOW’S INSURANCE BENEFITS.**—Section 202(e)(7)(A) of such Act (42 U.S.C. 402(e)(7)(A)) is amended by striking “if, on” and inserting “if, during any portion of the last 60 months of such service ending with”.

(d) **WIDOWER’S INSURANCE BENEFITS.**—Section 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is amended by striking “if, on” and inserting “if, during any portion of the last 60 months of such service ending with”.

(e) **MOTHER'S AND FATHER'S INSURANCE BENEFITS.**—Section 202(g)(4)(A) of the such Act (42 U.S.C. 402(g)(4)(A)) is amended by striking “if, on” and inserting “if, during any portion of the last 60 months of such service ending with”.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of the enactment of this Act, except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(b)(4)(A), 202(c)(2)(A), 202(e)(7)(A), or 202(f)(2)(A) of the Social Security Act (in the matter preceding clause (i) thereof)—

(1) if the last day of such service occurs before the end of the 90-day period following the date of the enactment of this Act, or

(2) in any case in which the last day of such service occurs after the end of such 90-day period, such individual performed such service during such 90-day period which constituted “employment” as defined in section 210 of such Act, and all such service subsequently performed by such individual has constituted such “employment”.

Subtitle C—Technical Amendments

SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking “Secretary” the first place it appears and inserting “Commissioner of Social Security”; and

(2) by striking “Secretary” each subsequent place it appears and inserting “Commissioner”.

SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) **IN GENERAL.**—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting “, but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires” before the semicolon.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) **AMENDMENT TO INTERNAL REVENUE CODE.**—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking “described in subsection (g)(5)” and inserting “on a farm operated for profit”.

(b) **AMENDMENT TO SOCIAL SECURITY ACT.**—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking “described in section 210(f)(5)” and inserting “on a farm operated for profit”.

(c) **CONFORMING AMENDMENT.**—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking “or is domestic service in a private home of the employer”.

SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) **CORRECTION OF TERMINOLOGY AND CITATIONS RESPECTING REMOVAL FROM THE UNITED STATES.**—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by section 412) is amended further—

(1) by striking “deportation” each place it appears and inserting “removal”;

(2) by striking “deported” each place it appears and inserting “removed”;

(3) in paragraph (1) (in the matter preceding subparagraph (A)), by striking “under section 241(a) (other than under paragraph (1)(C) thereof)” and inserting “under section 237(a) (other than paragraph (1)(C) thereof or 212(a)(6)(A))”;

(4) in paragraph (2), by striking “under any of the paragraphs of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) thereof)” and inserting “under any of the paragraphs of section 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) thereof or under section 212(a)(6)(A) of such Act”;

(5) in paragraph (3)—

(A) by striking “paragraph (19) of section 241(a)” and inserting “subparagraph (D) of section 237(a)(4)”; and

(B) by striking “paragraph (19)” and inserting “subparagraph (D)”; and

(6) in the heading, by striking “Deportation” and inserting “Removal”.

(b) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of such Act (42 U.S.C. 411(a)(15)) is amended by striking “section 162(m)” and inserting “section 162(l)”.

(c) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking “and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis”.

SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking “all of the gross income” and all that follows and inserting “the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;”.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking “all of the gross income” and all that follows and inserting “the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and”.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The “Social Security Protection Act of 2003,” H.R. 743, as amended provides the Social Security Administration (SSA) with the enhanced tools it needs to fight waste, fraud and abuse in Social Security programs.

Protects those unable to manage their financial affairs. The bill protects beneficiaries from representative payees who misuse benefits and enhances oversight of representative payees appointed by the SSA to manage Social Security and Supplemental Security Income (SSI) benefits for individuals who are unable to manage their own financial affairs. Representative payees would be held accountable for their actions when they misuse benefits entrusted to their care.

Deters fraud. The legislation helps stop waste, fraud and abuse within the Social Security programs by denying benefits to fugitive felons and persons violating their probation or parole, creating new penalties to prevent persons from misrepresenting themselves when they offer Social Security-related services, prohibiting individuals who fraudulently conceal work activity from being eligible for a trial work period, allowing Federal courts to order individuals who break Social Security law to make restitution to the Social Security Trust Funds or general fund, and protecting Social Security employees from harm while conducting their duties.

Helps individuals with disabilities. The bill improves access to legal representation for individuals with disabilities applying for benefits who need help negotiating the complex disability application process, enhances provisions of the Ticket to Work program to better enable SSA to test ways of helping individuals with disabilities return to work, and provides more individuals access to support and services to help them work. It also encourages more employers to hire individuals with disabilities by expanding eligibility for the Work Opportunity Tax Credit.

Finally, the legislation corrects, clarifies, or modifies various technical aspects of the law.

B. BACKGROUND AND NEED FOR THE LEGISLATION

The Social Security and SSI programs touch the lives of nearly every American and represent close to one-fourth of all Federal outlays in 2003. Nearly \$500 billion in Social Security and SSI benefits were paid last year to about 50 million retired and disabled workers and their families and survivors, as well as disabled or aged low-income individuals. Given the programs' magnitude and extensive influence over the economic well-being of American workers and their families, it is important to address inadequate protections for beneficiaries and to fight activities that drain resources from Social Security and undermine the financial security of beneficiaries.

Nearly 8 million Social Security and SSI beneficiaries cannot, for physical or mental reasons, manage their own financial affairs. In these cases, the SSA appoints an individual or organization, called a "representative payee," to manage these individuals' benefits. While most representative payees are conscientious and honest, some violate the trust placed in them. In a report issued in June 2002, *Analysis of Information Concerning Representative Payee Misuse of Beneficiaries' Payments*, the SSA Inspector General stated that from January 1997 through December 1999, over 2,400 representative payees misused about \$12 million in benefits. The SSA and the SSA Inspector General have recommended legislation to raise the standards for persons and organizations serving as representative payees and to impose stricter regulation and monetary penalties on those who mismanage benefits.

In addition to protecting the financial security of vulnerable beneficiaries, this bill also picks up where P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), left off in ending benefit payments to fugitive felons and persons who violate their probation or parole. That legislation denied SSI benefits to such individuals; however, they are still allowed to receive Social Security benefits. The Congressional Budget Office estimates \$525 million will be paid in benefits over the next 10 years out of the Social Security Trust Funds to these persons. In an August 2000 report, *Old-Age, Survivors and Disability Insurance Benefits Paid to Fugitives*, the SSA Inspector General estimated about 17,000 fugitives received Social Security benefits between PRWORA's enactment and 1999, and recommended legislation prohibiting payment of Social Security benefits to fugitive felons and probation or parole violators, similar to the SSI provision.

The Protection Act also incorporates recommendations by the SSA Inspector General to provide tools that further safeguard Social Security programs, help shield Social Security employees from harm while conducting their duties, expand the Inspector General's ability to stop perpetrators of fraud through new civil monetary penalties, and prevent persons from misrepresenting themselves as they provide Social Security-related services.

In addition to addressing waste, fraud, and abuse, the bill helps individuals with disabilities by making it easier for them to obtain legal representation when applying for benefits by improving the

attorney fee withholding process. Advocates for individuals with disabilities and claimants' representatives have stated in hearings before the Subcommittee on Social Security that allowing attorneys and claimants for Social Security benefits to sign an agreement requiring the Commissioner to pay the attorney directly from the claimant's past-due benefits has helped ensure there is a pool of private attorneys who are willing and able to help claimants pursue benefits. Extending attorney fee withholding to SSI cases would help expand the pool of attorneys willing to help many low-income SSI claimants to successfully pursue needed benefits. Likewise, advocates for claimant representatives have testified that the SSA's processing fee for withholding the attorney's fee from past-due benefits is excessive, limits the pool of attorneys willing to help claimants, and that reducing the fee would increase availability of representation for claimants.

Besides encouraging representation of claimants seeking benefits, advocates for individuals with disabilities have discussed at hearings and consultations with the Subcommittee on Social Security the need to improve and clarify provisions of the Ticket to Work program by enhancing demonstration projects, making work incentive services available to more individuals, and expanding eligibility for the Work Opportunity Tax Credit. These recommendations are all intended to encourage more disabled beneficiaries to return to work or maintain work effort.

Finally, the bill contains numerous provisions recommended by the SSA aimed at correcting inequities in the law regarding benefit coverage and receipt, as well as making technical corrections to the law. One of these provisions resulted from an August 2002 General Accounting Office (GAO) report, *Social Security Administration: Revision to the Government Pension Offset Exemption Should Be Considered*. The GAO found that teachers in Texas, and to a lesser extent in Georgia, were using a loophole in the law in order to receive higher spouse or survivor benefits from Social Security. In effect, teachers contributed to Social Security for as little as one day (an average of \$3 in payroll taxes) and qualified for over \$100,000 in spouse or survivor benefits over a lifetime, whereas similar workers who paid into Social Security throughout their careers received little or no spouse or survivor benefits. The GAO recommended amending the law to treat State and local workers the same as Federal workers in applying the exemption.

C. LEGISLATIVE HISTORY

During the 106th Congress, the Subcommittee held hearings on Social Security program integrity on March 30, 2000 (106-38); representative payees on May 4, 2000 (106-57); Social Security number use and misuse on May 9 and 11 (106-108), and July 17, 2000 (106-43); and the processing of attorney's fees on June 14, 2000 (106-70). The information gained from these hearings led to the introduction of H.R. 4857, the "Social Security Number Privacy and Identity Theft Prevention Act of 2000," to enhance privacy protections for individuals, prevent fraudulent misuse of the Social Security number, and provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees. In addition, H.R. 4633 was introduced to improve the SSA payment system for representation of claimants. On July 20,

2000, the Subcommittee ordered favorably reported H.R. 4857, as amended. The Committee on Ways and Means ordered the bill favorably reported, as amended on September 28, 2000 (H. Rept. 106-996 Part 1). The bill was not considered by the full House, as other committees of jurisdiction did not complete consideration of the bill.

In the 107th Congress, on May 10, 2001, the Subcommittee on Social Security held a hearing on the integrity of Social Security programs (107-30). The Subcommittee heard testimony from SSA Inspector General James G. Huse about the need to prohibit payment of Social Security benefits to fugitive felons and improve oversight of representative payees. Fritz Streckewald, Acting Assistant Deputy Commissioner of Disability and Income Security Programs of the SSA, testified about the agency's efforts to improve oversight of representative payees and stop SSI payments to fugitive felons. Advocates of individuals with disabilities expressed support for legislation to improve oversight of representative payees and protect beneficiaries from benefit misuse by representative payees.

On May 17, 2001, the Subcommittee on Social Security held a hearing on processing of attorneys' fees (107-24). Barbara Bovbjerg of the General Accounting Office (GAO) provided testimony on the estimated costs SSA incurs in withholding attorneys' fees from past-due benefits of claimants for Title II benefits, as well as ways the SSA could improve its processing of attorneys' fees. Advocates for claimants' representatives testified about the need to reduce the SSA's processing fees in order to encourage attorneys to accept cases of claimants seeking Social Security benefits. Advocates for claimants' representatives and advocates for individuals with disabilities testified about the need to extend withholding of attorneys' fees from past-due SSI benefits in order to increase the pool of attorneys willing to accept SSI cases.

On July 26, 2001, the Subcommittee on Social Security held a hearing on misleading mailings targeted to seniors (107-44). SSA Inspector General James G. Huse testified on how use of certain phrases and other devices gives the false impression of Federal agency endorsement or origination and is used to mislead seniors into providing personal information and/or sending money.

Information obtained during these hearings and those of the 106th Congress led to the introduction of H.R. 4070, the "Social Security Program Protection Act of 2002." On April 25, 2002, the Subcommittee on Social Security ordered favorably reported to the full Committee H.R. 4070, the "Social Security Program Protection Act of 2002," on a voice vote, with a quorum present. On June 25, 2002, H.R. 4070, as amended, was considered by the House of Representatives under suspension of the rules. On June 26, 2002, the House of Representatives agreed to H.R. 4070 by a recorded vote of 425-0. On November 18, 2002, H.R. 4070, as amended, was passed by the Senate by unanimous consent. The bill, as amended by the Senate, was not considered by the House of Representatives prior to adjournment of the 107th Congress.

Information obtained during hearings in the 106th and 107th Congress, as well as bipartisan support for H.R. 4070, led to introduction of H.R. 743, the "Social Security Protection Act of 2003." On February 27, 2003, the Subcommittee on Social Security held a hearing on the legislation. SSA Inspector General James G. Huse

testified in favor of the bill's provisions to improve representative payee selection and monitoring, to stop Social Security benefit payments to fugitive felons, and to provide civil monetary penalties for certain fraudulent or misleading activities like withholding material information in order to obtain or increase benefits. Barbara Bovbjerg and Dan Bertoni of the GAO provided testimony on the bill's provision implementing the GAO's recommendation to address abuse of the GPO exemption. Advocates for individuals with disabilities testified in support of the bill's provisions to extend attorney fee withholding to SSI claims, improve beneficiary protections with regard to representative payees, and provide improvement and clarification of certain Ticket to Work provisions. Advocates for claimants' representatives provided testimony regarding the bill's provisions to extend attorney fee withholding and cap the SSA's processing fee on attorney fee withholding.

On March 5, H.R. 743, as amended, was considered by the House of Representatives under suspension of the rules, and failed by a vote of 249–180. On March 13, 2003, the Committee on Ways and Means ordered favorably reported H.R. 743, the “Social Security Protection Act,” as amended, by a rollcall vote of 35–2.

II. EXPLANATION OF THE BILL

TITLE I. PROTECTION OF BENEFICIARIES

Subtitle A. Representative Payees

A. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES

(Sec. 101 of the Bill)

PRESENT LAW

The Social Security Act requires the re-issuance of benefits misused by any representative payee when the Commissioner finds that the Social Security Administration (SSA) negligently failed to investigate and monitor the payee.

REASON FOR CHANGE

There have been a number of highly publicized cases involving organizational representative payees that have misused large sums of monies paid to them on behalf of the Social Security and Supplemental Security Income (SSI) beneficiaries they represented. In most instances, these organizations operated as criminal enterprises, bent not only on stealing funds from beneficiaries, but also on carefully concealing the evidence of their wrongdoing. These illegal activities went undetected until large sums had been stolen. If the SSA is not shown to be negligent for failing to investigate and monitor the payee, affected beneficiaries may never be repaid or may be repaid only when the representative payee committing misuse makes restitution to the SSA.

Benefit misuse by representative payees who serve a number of beneficiaries can be difficult to detect, since it often involves victims that may have no family members or friends willing or able to help them. Requiring the SSA to reissue benefit payments to these victims of benefit misuse provides essential protection from

financial hardship. Moreover, extending the provision to cases involving individual payees serving fewer beneficiaries may lead to fraudulent claims of misuse. These claims, which often turn on information available only from close family members, would be difficult to assess. Similarly, extension of this provision to these cases could potentially encourage misuse or poor money management by these individual representative payees, if they believe the SSA could eventually pay the beneficiary a second time.

EXPLANATION OF PROVISION

In addition to cases where the SSA negligently failed to investigate and monitor the payee, the provision also requires the Commissioner to re-issue benefits under Titles II, VIII and XVI in any case in which a beneficiary's funds are misused by a representative payee that is not an individual (regardless of whether it is a qualified organization such as a State/local agency or a community non-profit social service agency) or an individual payee representing 15 or more beneficiaries.

The new provision defines misuse as any case in which a representative payee converts the benefits entrusted to his or her care for purposes other than the "use and benefit" of the beneficiary, and authorizes the Commissioner to define "use and benefit" in regulation.

In crafting a regulatory definition for "use and benefit," the Commissioner should take special care to distinguish between the situation in which the representative payee violates his or her responsibility by converting the benefits to further the payee's own self interest, and the situation in which the payee faithfully serves the beneficiary by using the benefits in a way that principally aids the beneficiary but which also incidentally aids the payee or another individual. For instance, cases in which a representative payee uses the benefits entrusted to his or her care to help pay the rent on an apartment that he or she and the beneficiary share should not be considered misuse.

EFFECTIVE DATE

Applies to any cases of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995. This protects the interests of beneficiaries affected by cases of egregious misuse that have been identified in recent years.

B. OVERSIGHT OF REPRESENTATIVE PAYEES

(Sec. 102 of the Bill)

PRESENT LAW

Present law requires community-based nonprofit social service agencies serving as representative payees to be licensed or bonded. Payees are not required to submit proof of bonding or licensing, and they are not subject to independent audits. In addition, there is no provision requiring periodic on-site reviews of organizational payees (other than the accountability monitoring done for State institutions that serve as representative payees).

REASON FOR CHANGE

Strengthening the bonding and licensing requirements for community-based nonprofit social service agencies would add further safeguards to protect beneficiaries' funds. State licensing provides for some oversight by the State into the organization's business practices, and bonding provides some assurances that a surety company has investigated the organization and approved it for the level of risk associated with the bond. Requiring annual certification as to the licensing and bonding of the payee, as well as submission of audits performed, should help prevent a payee from dropping their licensing or bonding subsequent to the SSA approving them as payee.

On-site periodic visits should be conducted regularly to reduce misuse of funds. To the degree possible, appropriate auditing and accounting standards should be utilized in conducting such reviews.

EXPLANATION OF PROVISION

The new provision requires community-based nonprofit social service agencies serving as representative payees to be both bonded and licensed (provided that licensing is available in the State). In addition, such representative payees must submit yearly proof of bonding and licensing, as well as copies of any independent audits that were performed on the payee since the previous certification.

The new provision also requires the Commissioner of Social Security to conduct periodic onsite reviews of: (1) a person who serves as a representative payee to 15 or more beneficiaries; (2) community-based nonprofit social service agencies serving as representative payees; and, (3) any agency that serves as the representative payee to 50 or more beneficiaries. In addition, the Commissioner is required to submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the reviews conducted in the prior fiscal year.

EFFECTIVE DATE

The bonding, licensing, and audit provisions are effective on the first day of the 13th month following enactment of the legislation. The periodic on-site review provision is effective upon enactment.

C. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR, OR FLEEING PROSECUTION, CUSTODY OR CONFINEMENT

(Sec. 103 of the Bill)

PRESENT LAW

Sections 205, 807, and 1631 of the Social Security Act disqualify individuals from being representative payees if they have been convicted of fraudulent conduct involving Social Security programs.

REASON FOR CHANGE

Prohibiting persons convicted of offenses resulting in imprisonment for more than one year and persons fleeing prosecution, custody or confinement for a felony from serving as representative payees decreases the likelihood of mismanagement or abuse of beneficiaries' funds. Also, allowing such persons to serve as representative payees could raise serious questions about the SSA's stewardship of taxpayer funds. The agency's report will assist Congress in its oversight of the representative payee program.

EXPLANATION OF PROVISION

The new provision expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she has been convicted of an offense resulting in imprisonment for more than one year, unless the Commissioner determines that payee status would be appropriate despite the conviction. It also disqualifies persons fleeing prosecution, custody, or confinement for a felony from being representative payees. Finally, the Commissioner shall assist law enforcement officials in apprehending such persons by providing them with the address, Social Security number, photograph, or other identifying information.

The new provision requires the Commissioner, in consultation with the SSA Inspector General, to submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate evaluating existing procedures and reviews conducted for representative payees to determine whether they are sufficient to protect benefits from being misused.

EFFECTIVE DATE

The first day of the 13th month beginning after the date of enactment, except that the report to Congress is due no later than 270 days after the date of enactment.

D. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES

(Sec. 104 of the Bill)

PRESENT LAW

Certain qualified organizations are authorized to collect a fee for their services. The fee, which is determined by a statutory formula, is deducted from the beneficiary's benefit payments.

REASON FOR CHANGE

Payees who misuse their clients' funds are not properly performing the service for which the fee was paid; therefore, they should forfeit such fees. Permitting the payee to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's needs.

EXPLANATION OF PROVISION

The new provision requires representative payees to forfeit the fee for those months during which the representative payee mis-

used funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction.

EFFECTIVE DATE

Applies to any month involving benefit misuse by a representative payee as determined by the Commissioner or a court of competent jurisdiction after 180 days after the date of enactment.

E. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS
(Sec. 105 of the Bill)

PRESENT LAW

Although the SSA has been provided with expanded authority to recover overpayments (such as the use of tax refund offsets, referral to contract collection agencies, notification of credit bureaus, and administrative offsets of future Federal benefit payments), these tools cannot be used to recoup benefits misused by a representative payee.

REASON FOR CHANGE

Treating misused benefits as overpayments to the representative payee would provide the SSA with additional means for recovering misused payments.

EXPLANATION OF PROVISION

The new provision treats benefits misused by any representative payee (except a Federal, State or local government agency) as an overpayment to the representative payee, thus subjecting the representative payee to current overpayment recovery authorities. Any recovered benefits not already reissued to the beneficiary pursuant to Section 101 of this legislation would be reissued to either the beneficiary or their alternate representative payee, up to the total amount misused.

EFFECTIVE DATE

Applies to benefit misuse by a representative payee in any case where the Commissioner of Social Security or a court of competent jurisdiction makes a determination of misuse after 180 days after the date of enactment.

F. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS
WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED
ACCOUNTING

(Sec. 106 of the Bill)

PRESENT LAW

The Social Security Act requires representative payees to submit accounting reports to the Commissioner of Social Security regarding how a beneficiary's benefit payments were used. A report is required at least annually, but may be required by the Commissioner at any time if the Commissioner has reason to believe the representative payee is misusing benefits.

REASON FOR CHANGE

Accounting reports are an important means of monitoring the activities of representative payees to prevent misuse of benefits. Redirecting benefit payments to the field office would enable the agency to promptly address the failure of the representative payee to file a report.

EXPLANATION OF PROVISION

The new provision authorizes the Commissioner of Social Security to require a representative payee to receive any benefits under Titles II, VIII, and XVI in person at a Social Security field office if the representative payee fails to provide a required accounting of benefits. The Commissioner would be required to provide proper notice and the opportunity for a hearing prior to redirecting benefits to the field office.

EFFECTIVE DATE

180 days after the date of enactment.

Subtitle B: Enforcement

G. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO
WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES

(Sec. 111 of the Bill)

PRESENT LAW

Section 1129 of the Social Security Act authorizes the Commissioner to impose a civil monetary penalty (of up to \$5,000 for each violation) along with an assessment (up to twice the amount wrongly paid), upon any person who knowingly uses false information or knowingly omits information to wrongly obtain Title II, VIII or XVI benefits.

REASON FOR CHANGE

Providing authority for SSA to impose civil monetary penalties along with an assessment of up to twice the amount of misused benefits would provide the SSA with an additional means to address benefit misuse by representative payees.

EXPLANATION OF PROVISION

The new provision expands civil monetary penalties authority under Section 1129 to include misuse of Title II, VIII or XVI benefits by representative payees. A civil monetary penalty of up to \$5,000 may be imposed for each violation, along with an assessment of up to twice the amount of misused benefits.

EFFECTIVE DATE

Applies to violations committed after the date of enactment.

TITLE II. PROGRAM PROTECTIONS

A. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO
KNOWING WITHHOLDING OF MATERIAL FACTS

(Sec. 201 of the Bill)

PRESENT LAW

Section 1129 of the Social Security Act, 42 U.S.C. § 1320a–8, authorizes the Commissioner of Social Security to impose civil monetary penalties and assessments on any person who makes a statement or representation of a material fact for use in determining initial or continuing rights to Title II, VIII, or XVI benefits that the person knows or should know omits a material fact or is false or misleading. In order for the penalty or assessment to be imposed, the law requires an affirmative act on the part of the individual of making (or causing to be made) a statement that omits a material fact or is false or misleading.

Section 1129A, 42 U.S.C. 1320a–8a, provides administrative procedures for imposing penalties of nonpayment of Title II and XVI benefits (6 months for the first violation) for making false statements.

REASON FOR CHANGE

Currently the SSA cannot impose civil monetary penalties and assessments on a person who should have come forward to notify the SSA of changed circumstances that affect eligibility or benefit amount, but did not. To be subject to civil monetary penalties and assessments under the current law, an individual must have made a statement that omitted a material fact or was false or misleading. Examples of the types of individuals intended to be covered under this amendment to Section 1129 and 1129A include (but are not limited to): (1) an individual who has a joint bank account with a beneficiary in which the SSA direct deposited the beneficiary’s Social Security checks; upon the death of the beneficiary, this individual fails to advise the SSA of the beneficiary’s death, instead spending the proceeds from the deceased beneficiary’s Social Security checks; and (2) an individual who is receiving benefits under one SSN while working under another SSN.

This amendment is intended to close this loophole in the current law, but is not intended to expand Section 1129 and 1129A to include those individuals whose failure to come forward to notify the SSA was not done for the purpose of improperly obtaining or continuing to receive benefits. For instance, it is not intended that the expanded authority be used against individuals who do not have the capacity to understand that their failure to come forward is misleading.

EXPLANATION OF PROVISION

By including the phrase “or otherwise withholds disclosure of,” in Section 1129 and 1129A, civil monetary penalties and assessments and sanctions could also be imposed for failure to come forward and notify the SSA of changed circumstances that affect eligibility or benefit amount when that person knows or should know that the failure to come forward is misleading.

EFFECTIVE DATE

Applies to violations committed after the date on which the Commissioner implements the centralized computer file described in Section 202.

**B. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS
TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN
WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES**

(Sec. 202 of the Bill)

PRESENT LAW

Changes in work or earnings status can affect a Title II disability beneficiary's right to continued entitlement to disability benefits. Changes in the amount of earned income can also affect an SSI recipient's continued eligibility for SSI benefits or his or her monthly benefit amount.

The Commissioner has promulgated regulations that require Title II disability beneficiaries to report changes in work or earnings status (20 CFR, § 404.1588) and regulations that require SSI recipients (or their representative payees) to report any increase or decrease in income (20 CFR, §§ 416.704-416.714).

REASON FOR CHANGE

Witnesses have testified before the Social Security Subcommittee and the Human Resources Subcommittee that the SSA does not currently have an effective system in place for processing and recording Title II and Title XVI disability beneficiaries' reports of changes in work and earnings status. Issuing receipts to disabled beneficiaries who make such reports would provide them with proof that they had properly fulfilled their obligation to report these changes.

EXPLANATION OF PROVISION

The new provision requires the Commissioner to issue a receipt to a disabled beneficiary (or representative of a beneficiary) who reports a change in his or her work or earnings status. The Commissioner is required to continue issuing such receipts until the Commissioner has implemented a centralized computer file that would record the date on which the disabled beneficiary (or representative) reported the change in work or earnings status.

This provision requires the Commissioner to begin issuing receipts as soon as possible, but no later than one year after the date of enactment. The Committee on Ways and Means is aware that the SSA has developed software known as the Modernized Return to Work System (MRTW). This software will assist SSA employees in recording information about changes in work and earnings status and in making determinations of whether such changes affect continuing entitlement to disability benefits. The software also has the capability of automatically issuing receipts. The SSA has informed the Committee on Ways and Means that this software is already in use in some of the agency's approximately 1300 local field offices, and that the SSA expects to put it into operation in the remainder of the field offices over the next year. The Committee on

Ways and Means expects that the SSA field offices that are already using the MRTW system will immediately begin issuing receipts to disabled beneficiaries who report changes in work or earnings status, and that the SSA will require the other field offices to begin issuing receipts as these offices begin using the MRTW system over the next year. For disabled Title XVI beneficiaries, if the SSA issues a notice to the beneficiary immediately following the report of earnings that details the effect of the change in income on the monthly benefit amount, this notice would serve as a receipt.

EFFECTIVE DATE

Requires the Commissioner to begin issuing receipts as soon as possible, but no later than one year after the date of enactment.

C. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE

(Sec. 203 of the Bill)

PRESENT LAW

The “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” (PRWORA) P.L. 104–193, included provisions making persons ineligible to receive SSI benefits during any month in which they are fleeing to avoid prosecution, custody, or confinement for a felony, or if they are in violation of a condition of probation or parole. However, this prohibition was not extended to Social Security benefits under Title II.

REASON FOR CHANGE

There are concerns that Social Security benefits, not just Supplemental Security Income and other welfare benefits, are being used to aid flight from justice or other crime. The Congressional Budget Office has estimated that persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or in violation of a condition of probation or parole, will receive \$526 million in Title II Social Security benefits over the next 10 years. The Social Security Inspector General (SSA IG) recommended changing the law to prohibit fugitive felons and other criminals from receiving benefits.

The provision gives the Commissioner authority to pay withheld Title II benefits if there is “good cause.” The Commissioner would be required to develop regulations within one year of the date of enactment. This “good cause” discretion is authorized for the Commissioner in cases of Title II benefits, where it was not authorized or intended for programs affected under the similar provision in PRWORA, because workers earn the right to receive benefits for themselves and their families through their career-long Social Security payroll tax contributions.

The good cause exception will provide the Commissioner with the ability to pay benefits under circumstances in which the Commissioner deems withholding of benefits to be inappropriate—for example, but not limited to, situations when Social Security beneficiaries are found to be in flight from a warrant relating to a crime for which a court of competent jurisdiction finds the person not

guilty, or if the charges are dismissed; if a warrant for arrest is vacated; or if probation or parole is not revoked. In such circumstances, it is expected that the Commissioner would pay benefits withheld from the beneficiary for which he or she was otherwise eligible but for the prohibition in this provision.

In testimony received at a February 27, 2003 hearing, the Subcommittee was made aware of instances with respect to the SSI program where there may be mitigating circumstances relating to persons with outstanding warrants for their arrest. In addition, PRWORA implementing instructions have been found to vary between agencies. For example, the Department of Agriculture's Food and Nutrition Service has issued instructions that in order to be considered "fleeing," the individual must have knowledge a warrant has been issued for his or her arrest and that the State agency should verify the individual has such knowledge. In addition, once the person has knowledge of the warrant, either by having received it personally or by being advised of its existence by the State agency, he or she is technically "fleeing" at that time. Finally, the instructions strongly urge the State agency to give the individual an opportunity to submit documentation that the warrant has been satisfied. The Social Security Administration's procedures do not include such instructions.

The SSA IG is conducting an audit on implementation of the fugitive felon provision for the Supplemental Security Income program, which will shed light on the types of crimes beneficiaries committed, law enforcement's pursuit of such criminals, the length of time benefits were suspended, the SSA's handling of these cases, and other issues. The Subcommittee will continue to closely monitor these issues and encourages the Commissioner to review the agency's implementing instructions in light of these circumstances and what constitutes flight under Federal law.

EXPLANATION OF PROVISION

The new provision denies Social Security benefits under Title II to persons fleeing prosecution, custody or confinement for a felony, and to persons violating probation or parole. However, the Commissioner may, for good cause, pay withheld benefits. Finally, the Commissioner shall assist law enforcement officials in apprehending such persons by providing them with the address, Social Security number, photograph, or other identifying information.

EFFECTIVE DATE

First day of the first month that begins on or after the date that is 9 months after the date of enactment.

D. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION

(Sec. 204 of the Bill)

PRESENT LAW

Section 1140 of the Social Security Act prohibits or restricts various activities involving the use of Social Security and Medicare symbols, emblems, or references that give a false impression that

an item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services), or the Department of Health and Human Services. It also provides for the imposition of civil monetary penalties with respect to violations of the section.

REASON FOR CHANGE

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from the SSA free of charge. For example, the SSA's Inspector General has encountered business entities that have offered assistance to individuals in changing their names (upon marriage) or in obtaining a Social Security number (upon the birth of a child) for a fee, even though these services are directly available from the SSA for free. The offer from the business entities either did not state at all, or did not clearly state, that these services were available from the SSA for free. These practices can mislead and deceive senior citizens, newlyweds, new parents, and other individuals seeking services or products, who may not be aware that the SSA provides these services for free.

EXPLANATION OF PROVISION

Several individuals and companies offer Social Security-related services for a fee even though the same services are available directly from the SSA free of charge. The new provision requires persons or companies offering such services to include in their offer a statement that the services they provide for a fee are available directly from the SSA free of charge. The statements would be required to comply with standards promulgated through regulation by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility.

EFFECTIVE DATE

Applies to offers of assistance made after the sixth month following the issuance of these standards. Requires the Commissioner to promulgate regulations within 1 year after the date of enactment.

E. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES

(Sec. 205 of the Bill)

PRESENT LAW

An attorney in good standing is entitled to represent claimants before the Commissioner of Social Security. The Commissioner may prescribe rules and regulations governing the recognition of persons other than attorneys representing claimants before the Commissioner. Under present law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative.

REASON FOR CHANGE

This provision would provide additional protections for beneficiaries who may rely on representatives during all phases of their benefit application process. As part of their ongoing oversight of claimant representatives, the Committee on Ways and Means intends to review whether options to establish protections for claimants represented by non-attorneys should be considered.

EXPLANATION OF PROVISION

The new provision authorizes the Commissioner to refuse to recognize as a representative, or disqualify as a representative, an attorney who has been disbarred or suspended from any court or bar, or who has been disqualified from participating in or appearing before any Federal program or agency. Due process (i.e., notice and an opportunity for a hearing) would be required before taking such action. Also, if a representative has been disqualified or suspended as a result of collecting an unauthorized fee, full restitution is required before reinstatement can be considered.

EFFECTIVE DATE

Upon enactment.

F. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH
ADMINISTRATION OF THE SOCIAL SECURITY ACT

(Sec. 206 of the Bill)

PRESENT LAW

No provision.

REASON FOR CHANGE

This provision extends to SSA employees the same protections provided to employees of the Internal Revenue Service under the Internal Revenue Code of 1954. These protections will allow SSA employees to perform their work with more confidence that they will be safe from harm.

The Internal Revenue Manual defines the term “corruptly” as follows:

“Corruptly” characterizes an attempt to influence any official in his or her official capacity under this title by any improper inducement. For example, an offer of a bribe or a passing of a bribe to an Internal Revenue employee for the purpose of influencing him or her in the performance of his or her official duties is corrupt interference with the administration of Federal laws. (Internal Revenue Manual, [9.5] 11.3.2.2, 4-09-1999.)

EXPLANATION OF PROVISION

The new provision imposes a fine of not more than \$5,000, imprisonment of not more than 3 years, or both, for attempting to intimidate or impede—corruptly or by using force or threats of force—any Social Security Administration (SSA) officer, employee or contractor (including State employees of disability determination services and any individuals designated by the Commissioner)

while they are acting in their official capacities under the Social Security Act. If the offense is committed only by threats of force, the offender is subject to a fine of not more than \$3,000, no more than one year in prison, or both.

The Committee on Ways and Means expects that judgment will be used in enforcing this section. Social Security and SSI disability claimants and beneficiaries, in particular, are frequently subject to multiple, severe life stressors, which may include severe physical, psychological, or financial difficulties. In addition, disability claimants or beneficiaries who encounter delays in approval of initial benefit applications or in post-entitlement actions may incur additional stress, particularly if they have no other source of income. Under such circumstances, claimants or beneficiaries may at times express frustration in an angry manner, without truly intending to threaten or intimidate SSA employees. In addition, approximately 25 percent of Social Security disability beneficiaries and 35 percent of disabled SSI recipients have mental impairments, and such individuals may be less able to control emotional outbursts. These factors should be taken into account in enforcing this provision.

EFFECTIVE DATE

Upon enactment.

G. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE

(Sec. 207 of the Bill)

PRESENT LAW

Section 1140 of the Social Security Act prohibits (subject to civil penalties) the use of Social Security or Medicare symbols, emblems and references on any item in a manner that conveys the false impression that such item is approved, endorsed or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) or the Department of Health and Human Services.

REASON FOR CHANGE

The SSA Inspector General has found these phrases appearing in mailings, solicitations, or flyers, which, when used with the SSA's words, symbols, emblems, and references may be particularly misleading and more likely to convey the false impression that such item is approved, endorsed, or authorized by the SSA, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services), or the Department of Health and Human Services. Expansion of this list helps to ensure that individuals receiving any type of mail, solicitations or flyers bearing symbols, emblems or names in reference to Social Security or Medicare are not misled into believing that these agencies approved or endorsed the services or products depicted.

EXPLANATION OF PROVISION

The new provision expands the prohibition in present law to several other references to Social Security and Medicare. This in-

cludes, but is not limited to, “Death Benefits Update,” “Federal Benefits Information,” and “Final Supplemental Plan.”

EFFECTIVE DATE

Applies to items sent after 180 days after the date of enactment.

H. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK AC- TIVITY

(Sec. 208 of the Bill)

PRESENT LAW

An individual entitled to disability benefits under Title II is entitled to a “trial work period” to test his or her ability to work. The trial work period allows beneficiaries to have earnings from work above a certain amount (\$570 a month in 2003) for up to 9 months (which need not be consecutive) within any 60-month period without any loss of benefits. Presently, Section 222(c) of the Social Security Act does not prohibit a person entitled to disability benefits under Title II from receiving disability benefits during a trial work period, even if convicted by a Federal court for fraudulently concealing work activity during that period.

The SSA’s Inspector General has pursued prosecution of Title II disability beneficiaries who fraudulently conceal work activity by applying several criminal statutes, including Section 208(a) of the Social Security Act, and Sections 371 and 641 of Title 18 of the United States Code (Crimes and Criminal Procedures).

REASON FOR CHANGE

Under current law, if an individual is convicted of fraudulently concealing work activity, the dollar loss to the government is calculated based on the benefits that the individual would have received had he or she not concealed the work activity. During the trial work period, disability beneficiaries continue to receive their monthly benefit amount regardless of their work activity. Therefore, the SSA does not include benefits paid during a trial work period in calculating the total dollar loss to the government, even if the individual fraudulently concealed work activity during that period. As a result, the dollars lost to the government may fall below the thresholds set by the United States Attorneys in cases involving fraudulent concealment of work by Title II disability beneficiaries. In such situations, the case would not be prosecuted, even if the evidence of fraud were very clear.

This provision rectifies the situation by establishing that individuals convicted of fraudulently concealing work activity during the trial work period are not entitled to receive any disability benefits for trial work period months prior to the conviction (but within the same period of disability).

EXPLANATION OF PROVISION

Under the new provision, an individual convicted by a Federal court of fraudulently concealing work activity from the Commissioner of Social Security would not be entitled to receive any disability benefits in any trial work period month and would be liable

for repayment of those benefits, in addition to any restitution, penalties, fines or assessments otherwise due.

Under this provision, concealing work activity is considered to be fraudulent if the individual: (1) provided false information to the SSA about his or her earnings during that period; (2) worked under another identity, including under another person's or a false Social Security number; or (3) took other actions to conceal work activity with the intent to receive benefits to which he or she was not entitled.

EFFECTIVE DATE

Effective with respect to work activity performed after the date of enactment.

I. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION

(Sec. 209 of the Bill)

PRESENT LAW

A court may order restitution when sentencing a defendant convicted of various offenses under Titles 18, 21, and 49 of the United States Code. However, violations of the Social Security Act (42 U.S.C.) are not included among those for which the court may order restitution.

REASON FOR CHANGE

This provision would enhance a judge's ability to compensate the programs and punish persons convicted of violations including, but not limited to, improper receipt of Social Security payments and misuse of Social Security numbers.

EXPLANATION OF PROVISION

This provision amends the Social Security Act to allow a Federal court to order restitution to the Social Security Administration for violations of the Social Security Act. Restitution in connection with benefit misuse by a representative payee would be credited to the Social Security Trust Funds for cases involving OASDI recipients and to the general fund for cases involving Supplemental Security Income and Special Veterans benefits. Other restitution funds, credited to a special fund established in the Treasury, would be available to defray expenses incurred in implementing Title II, Title VIII, and Title XVI. If the court does not order restitution, or only orders partial restitution, the court must state the reason on the record.

EFFECTIVE DATE

Effective with respect to violations occurring on or after the date of enactment.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

A. CAP ON ATTORNEY ASSESSMENTS

(Sec. 301 of the Bill)

PRESENT LAW

If there is an agreement between the claimant and the attorney, the Social Security Act requires the SSA to pay attorney fees for Title II claims directly to the attorney out of the claimant's past-due benefits. The SSA charges an assessment, at a rate not to exceed 6.3 percent of approved attorney fees, for the costs of determining, processing, withholding, and distributing attorney fees.

REASON FOR CHANGE

Testimony was given at a House oversight hearing in May 2001 on the SSA's processing of attorney representatives' fees that the amount of the fee assessment is unfair to these attorneys, who provide an important service to claimants. The attorneys who receive fee payments from the agency have their gross revenue reduced by 6.3 percent. As a result of this revenue loss and the time it takes for the SSA to issue the fee payments to attorneys, a number of attorneys have decided to take fewer or none of these cases. The cap on the amount of the assessment would help ensure that enough attorneys remain available to represent claimants before the Social Security Administration.

The Committee on Ways and Means continues to be concerned about the agency's processing time for attorney representative fee payments and expects the SSA to further automate the payment process as soon as possible.

EXPLANATION OF PROVISION

The new provision imposes a cap of \$75 on the 6.3 percent assessment on approved attorney representative fees for Title II claims. The cap is indexed annually for inflation.

EFFECTIVE DATE

After 180 days after the date of enactment.

B. EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS

(Sec. 302 of the Bill)

PRESENT LAW

If there is an agreement between the claimant and the attorney, the Social Security Act requires attorney fees for Title II claims to be paid by the SSA directly to the attorney out of the claimant's past-due benefits (subject to an assessment to cover the SSA's costs). However, attorney fees for Title XVI claims are not paid directly by the SSA out of past-due benefits. Instead, the attorney must collect the fee from the beneficiary.

REASON FOR CHANGE

Withholding the attorney fee payments from the SSI benefit claim would improve SSI applicants' access to representation, as more attorneys would be willing to represent claimants if they are guaranteed payment.

Payment of States first and attorneys second would ensure that States providing interim assistance to individuals would not receive less reimbursement, while also providing a method of ensuring that attorneys receive payment and continue to provide representation.

EXPLANATION OF PROVISION

The provision would extend direct fee payment to attorneys out of past-due benefits for Title XVI claims. It would also authorize the SSA to charge a processing assessment of up to 6.3 percent of the approved attorney fees, subject to a cap of \$75 that is indexed for inflation. The provision would sunset with respect to agreements for representation entered into after 5 years after the implementation date.

In addition, in cases where the States would be reimbursed for interim assistance they had provided to a beneficiary awaiting a decision on a claim for SSI benefits, the State would be paid first, and the attorney would be paid second out of the past-due benefit amount.

The provision also requires the General Accounting Office to conduct a study of claimant representation in the Social Security and Supplemental Security Income programs. The study will include an evaluation of the potential results of extending the fee withholding process to non-attorney representatives.

EFFECTIVE DATE

Applies with respect to fees for representation that are first required to be certified or paid on or after the first day of the first month that begins after 270 days after the date of enactment. The GAO report is due to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 1 year after the date of enactment.

TITLE IV: MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A: Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

A. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS

(Sec. 401 of the Bill)

PRESENT LAW

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. These projects can test: (1) alternative methods of treating work activity of individuals entitled to disability benefits; (2) the alteration of other limitations and conditions that apply to such individuals (such as an increase in the length of the trial work period); and, (3) implementation of sliding

scale benefit offsets. To conduct the projects, the Commissioner may waive compliance with the benefit requirements of Title II and Section 1148, and the HHS Secretary may waive the benefit requirements of Title XVIII. The Commissioner's authority to conduct demonstration projects terminates on December 17, 2004, five years after its enactment in the "Ticket to Work and Work Incentives Improvement Act of 1999" (P.L. 106-170, "Ticket to Work Act").

REASON FOR CHANGE

The current five-year limitation on waiver authority restricts the options that may be tested to improve work incentives and return to work initiatives, as several potential options the Commissioner may test would extend past the current five-year limit. Developing a well-designed demonstration project can require several years, and the current five-year authority might not allow sufficient time to both design the project and to conduct it long enough to obtain reliable data.

EXPLANATION OF PROVISION

The new provision clarifies that the Commissioner is authorized to conduct demonstration projects that extend beyond December 17, 2004, if such projects are initiated on or before that date (i.e., initiated within the five-year window after enactment of the Ticket to Work Act).

EFFECTIVE DATE

Upon enactment.

B. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

(Sec. 402 of the Bill)

PRESENT LAW

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. In addition, Section 302 of the Ticket to Work Act directs the Commissioner to conduct demonstration projects for the purpose of evaluating a program for Title II disability beneficiaries under which benefits are reduced by \$1 for each \$2 of the beneficiary's earnings above a level determined by the Commissioner. To permit a thorough evaluation of alternative methods, Section 302 of the Ticket to Work Act allows the Commissioner to waive compliance with the benefit provisions of Title II and allows the Secretary of Health and Human Services to waive compliance with the benefit requirements of Title XVIII.

REASON FOR CHANGE

This additional waiver authority is needed to allow the Commissioner to effectively test the \$1-for-\$2 benefit offset in combination with return to work services under the Ticket to Work program. Under the \$1-for-\$2 benefit offset, earnings of many beneficiaries may not be sufficient to completely eliminate benefits. However,

under Section 1148 of the Social Security Act, benefits must be completely eliminated before employment networks participating in the Ticket to Work program are eligible to receive outcome payments. Therefore, employment networks are likely to be reluctant to accept tickets from beneficiaries participating in the \$1 for \$2 benefit offset demonstration, making it impossible for the SSA to effectively test the combination of the benefit offset and these return to work services. Additionally, Section 1148 waiver authority was provided for the broad Title II disability demonstration authority under Section 234 of the Social Security Act, but not for this mandated project.

EXPLANATION OF PROVISION

The new provision allows the Commissioner to also waive requirements in Section 1148 of the Social Security Act, which governs the Ticket to Work and Self-Sufficiency Program (Ticket to Work program), as they relate to Title II.

EFFECTIVE DATE

Upon enactment.

C. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

(Sec. 403 of the Bill)

PRESENT LAW

The Ticket to Work Act provides that the benefits and administrative expenses of conducting the \$1-for-\$2 demonstration projects will be paid out of the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal Hospital Insurance and Federal Supplementary Medical Insurance (HI/SMI) Trust Funds, to the extent provided in advance in appropriations acts.

REASON FOR CHANGE

For demonstration projects conducted under the broader Title II demonstration project authority under Section 234 of the Social Security Act, administrative costs are paid out of otherwise available annually appropriated funds, and benefits associated with the demonstration projects are paid from the OASDI or HI/SMI Trust Funds. This provision would make funding sources for the \$1-for-\$2 demonstration project under the Ticket to Work Act consistent with funding sources for other Title II demonstration projects.

EXPLANATION OF PROVISION

The new provision establishes that administrative expenses for the \$1-for-\$2 demonstration project will be paid out of otherwise available annually-appropriated funds, and that benefits associated with the demonstration project will be paid from the OASDI or HI/SMI Trust Funds.

EFFECTIVE DATE

Upon enactment.

D. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE
SERVICES TO ADDITIONAL INDIVIDUALS

(Sec. 404 of the Bill)

PRESENT LAW

Section 1149 of the Social Security Act (the act), as added by the Ticket to Work Act, directs the SSA to establish a community-based work incentives planning and assistance programs to provide benefits planning and assistance to disabled beneficiaries. To establish this program, the SSA is required to award cooperative agreements (or grants or contracts) to State or private entities. In fulfillment of this requirement, the SSA has established the Benefits Planning, Assistance, and Outreach (BPAO) Program. BPAO projects now exist in every State.

Section 1150 of the act authorizes the SSA to award grants to State protection and advocacy (P&A) systems so that they can provide protection and advocacy services to disabled beneficiaries. Under this section, services provided by participating P&A systems may include: (1) information and advice about obtaining vocational rehabilitation (VR) and employment services; and (2) advocacy or other services that a disabled beneficiary may need to secure or regain employment. The SSA has established the Protection and Advocacy to Beneficiaries of Social Security (PABSS) Program pursuant to this authorization.

To be eligible for services under either the BPAO or PABSS programs, an individual must be a “disabled beneficiary” as defined under Section 1148(k) of the act. Section 1148(k) defines a disabled beneficiary as an individual entitled to Title II benefits based on disability or an individual who is eligible for Federal SSI cash benefits under Title XVI based on disability or blindness.

REASON FOR CHANGE

The Committee on Ways and Means recognizes that Social Security and SSI beneficiaries with disabilities face a variety of barriers and disincentives to becoming employed and staying in their jobs. The intent of this provision, as with the Ticket to Work Act, is to encourage disabled individuals to work.

The definition of “disabled beneficiary” under section 1148(k) of the act does not include several groups of beneficiaries, including individuals who are no longer eligible for SSI benefits because of an earnings increase but remain eligible for Medicaid under section 1619(b); individuals receiving only a State supplementation payment; and individuals who are in an extended period of Medicare eligibility. The Committee on Ways and Means believes that BPAO and PABSS services should be available to all of these disabled beneficiaries regardless of Title II or SSI payment status. Beneficiaries may have progressed beyond eligibility for Federal cash benefits, but may still need information about the effects of work on their benefits, or may need advocacy or other services to help them maintain or regain employment. Extending eligibility for the BPAO and PABSS programs to beneficiaries who are receiving a State supplementation payment or are still eligible for Medicare or Medicaid, but who are no longer eligible for Federal cash benefits, will help to prevent these beneficiaries from returning to the Fed-

eral cash benefit rolls and help them to reach their optimum level of employment.

The Committee on Ways and Means also intends that PABSS services be available to provide assistance to beneficiaries who have successfully obtained employment but who continue to encounter job-related difficulties. Therefore, the new provision extends the current PABSS assistance (which is available for securing and regaining employment) to maintaining employment—thus providing a continuity of services for disabled individuals throughout the process of initially securing employment, the course of their being employed and, if needed, their efforts to regain employment. This provision would ensure that disabled individuals would not face a situation in which they would have to wait until they lost their employment in order to once again be eligible to receive PABSS services. Payments for services to maintain employment would be subject to Section 1150(c) of the Social Security Act. The Committee on Ways and Means will continue to monitor the implementation of PABSS programs to ensure that assistance is directed to all areas in which beneficiaries face obstacles in securing, maintaining, or regaining work.

EXPLANATION OF PROVISION

The new provision expands eligibility for the BPAO and PABSS programs under Sections 1149 and 1150 of the act to include not just individuals who are “disabled beneficiaries” under Section 1148(k) of the act, but also individuals who (1) are no longer eligible for SSI benefits because of an increase in earnings, but remain eligible for Medicaid under Section 1619(b); (2) receive only a State supplementation payment (a payment that some States provide as a supplement to the Federal SSI benefit); or (3) are in an extended period of Medicare eligibility under Title XVIII after a period of Title II disability has ended. The new provision also expands the types of services a P&A system may provide under Section 1150 of the act. Currently P&A systems may provide “advocacy or other services that a disabled beneficiary may need to secure or regain employment,” while the new provision allows them to provide “advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain employment.”

EFFECTIVE DATE

The amendment to Section 1149, which affects the BPAO Program, is effective with respect to grants, cooperative agreements or contracts entered into on or after the date of enactment. The amendments to Section 1150, which affect the PABSS Program, are effective for payments provided after the date of the enactment.

E. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

(Sec. 405 of the Bill)

PRESENT LAW

Under Section 51 of the Internal Revenue Code (IRC), employers may claim a Work Opportunity Tax Credit (WOTC) if they hire,

among other individuals, individuals with disabilities who have been referred by a State vocational rehabilitation (VR) agency. For an individual to qualify as a vocational rehabilitation referral under Section 51(d)(6)(B) of the IRC, the individual must be receiving or have completed vocational rehabilitation services pursuant to: (i) “an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973”; or (ii) “a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.” (IRC, Section 51(d)(6)(B)).

The WOTC is equal to 40 percent of the first \$6,000 of wages paid to newly hired employees during their first year of employment when the employee is retained for at least 400 work hours. As such, the maximum credit per employee is \$2,400, but the credit may be less depending on the employer’s tax bracket. A lesser credit rate of 25 percent is provided to employers when the employee remains on the job for 120–399 hours. The amount of the credit reduces the company’s deduction for the employee’s wages.

The Ticket to Work Act established the Ticket to Work and Self-Sufficiency Program (Ticket to Work program) under Section 1148 of the Social Security Act. Under this program, the SSA provides a “ticket” to eligible Social Security Disability Insurance beneficiaries and Supplemental Security Income beneficiaries with disabilities that allows them to obtain employment and other support services from an approved “employment network” of their choice. Employment networks may include State, local, or private entities that can provide directly, or arrange for other organizations or entities to provide, employment services, VR services, or other support services. State VR agencies have the option of participating in the Ticket to Work program as employment networks. Employment networks must work with each beneficiary they serve to develop an individual work plan (IWP) for that beneficiary that outlines his or her vocational goals and the services needed to achieve those goals. For VR agencies that participate in the Ticket to Work program, the individualized written plan for employment (as specified under (i) in paragraph one above) serves in lieu of the IWP.

Under current law, an employer hiring a disabled individual referred by an employment network does not qualify for the WOTC unless the employment network is a State VR agency.

REASON FOR CHANGE

The Ticket to Work program was designed to increase choice available to beneficiaries when they select providers of employment services. Employers hiring individuals with disabilities should be able to qualify for the WOTC regardless of whether the employment referral is made by a public or private service provider. This amendment updates eligibility criteria for the WOTC to conform to the expansion of employment services and the increase in number and range of VR providers as a result of the enactment of the Ticket to Work Act.

EXPLANATION OF PROVISION

The new provision allows employers who hire disabled workers through referrals by employment networks under Section 1148 of the Social Security Act to qualify for the WOTC. Specifically, it pro-

vides that, for purposes of Section 51(d)(6)(B)(i) of the IRC of 1986, an IWP under Section 1148 of the Social Security Act shall be treated as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.

EFFECTIVE DATE

Effective as if it were included in Section 505 of the Ticket to Work Act.

Subtitle B. Miscellaneous Amendments

F. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES
FULLY FAVORABLE TO THE CLAIMANT

(Sec. 411 of the Bill)

PRESENT LAW

The Social Security Act requires the SSA to file a hearing transcript with the District Court for any SSA hearing that follows a court remand of a SSA decision.

REASON FOR CHANGE

A claimant whose benefits have been denied is provided a transcript of a hearing to be used when the claimant appeals his case in Federal District court. If the Administrative Law Judge issues a fully favorable decision, then transcribing the hearing is unnecessary since the claimant would not appeal this decision.

EXPLANATION OF PROVISION

The new provision clarifies that the SSA is not required to file a transcript with the court when the SSA, on remand, issues a decision fully favorable to the claimant.

EFFECTIVE DATE

Effective with respect to final determinations issued (upon remand) on or after the date of enactment.

G. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED
STATES

(Sec. 412 of the Bill)

PRESENT LAW

In most cases, the Social Security Act prohibits the payment of Social Security benefits to non-citizens who are deported from the United States. However, the act does not prohibit the payment of Social Security benefits to non-citizens who are deported for smuggling other non-citizens into the United States.

REASON FOR CHANGE

Individuals who are removed from the United States for smuggling aliens have committed an act that should prohibit them from receiving Social Security benefits.

EXPLANATION OF PROVISION

The new provision requires the SSA to suspend benefits of beneficiaries who are removed from the United States for smuggling aliens.

EFFECTIVE DATE

Applies with respect to removals occurring after the date of enactment.

H. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS

(Sec. 413 of the Bill)

PRESENT LAW

The Federal Reports Elimination and Sunset Act of 1995 “sunsetting” most annual or periodic reports from agencies to Congress that were listed in a 1993 House inventory of congressional reports.

REASON FOR CHANGE

The reports to be reinstated provide Congress with important information needed to evaluate and oversee the Social Security and Medicare programs.

EXPLANATION OF PROVISION

The new provision reinstates the requirements for several periodic reports to Congress that were subject to the 1995 “sunset” act, including annual reports on the financial solvency of the Social Security and Medicare programs (the Board of Trustees’ reports on the OASDI, HI, and SMI Trust Funds) and annual reports on certain aspects of the administration of the Title II disability program (the SSA Commissioner’s reports on pre-effectuation reviews of disability determinations and continuing disability reviews).

EFFECTIVE DATE

Upon enactment.

I. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS

(Sec. 414 of the Bill)

PRESENT LAW

Under the definitions of “widow” and “widower” in Section 216 of the Social Security Act, a widow or widower must have been married to the deceased spouse for at least nine months before his or her death in order to be eligible for survivor benefits.

REASON FOR CHANGE

This provision allows the Commissioner to issue benefits in certain unusual cases in which the duration of marriage requirement could not be met due to a legal impediment over which the individual had no control and the individual would have met the legal requirements were it not for the legal impediment.

EXPLANATION OF PROVISION

The new provision creates an exception to the nine-month requirement for cases in which the Commissioner finds that the claimant and the deceased spouse would have been married for longer than nine months but for the fact that the deceased spouse was legally prohibited from divorcing a prior spouse who was institutionalized due to mental incompetence or similar incapacity.

EFFECTIVE DATE

Effective for benefit applications filed after the date of enactment.

J. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER

(Sec. 415 of the Bill)

PRESENT LAW

In cases where there is an agreement with a foreign country (i.e., a totalization agreement), a worker's earnings are exempt from United States Social Security payroll taxes when those earnings are subject to the foreign country's retirement system.

REASON FOR CHANGE

In U.S. totalization agreements, a person's work is generally subject to the Social Security laws of the country in which the work is performed. In most cases, the worker (whether subject to the laws of the United States or the other country) is compulsorily covered and required to pay contributions in accordance with the laws of that country. In some instances, however, work that would be compulsorily covered in the U.S. is excluded from compulsory coverage in the other country (such as Germany). In such cases, the IRS has questioned the exemption from U.S. Social Security tax for workers who elect not to make contributions to the foreign country's retirement system. This provision would remove any question regarding the exemption and would be consistent with the general philosophy behind the coverage rules of totalization agreements.

EXPLANATION OF PROVISION

The new provision clarifies the legal authority to exempt a worker's earnings from United States Social Security tax in cases where the earnings were subject to a foreign country's retirement system in accordance with a U.S. totalization agreement, but the foreign country's law does not require compulsory contributions on those earnings. The provision establishes that such earnings are exempt from United States Social Security tax whether or not the worker elected to make contributions to the foreign country's retirement system.

EFFECTIVE DATE

Upon enactment.

K. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC
EMPLOYEES IN KENTUCKY

(Sec. 416 of the Bill)

PRESENT LAW

Under Section 218 of the Social Security Act, a State may choose whether or not its State and local government employees who are covered by a public pension plan may also participate in the Social Security Old-Age, Survivors, and Disability Insurance program. (In this context, the term “public pension plan” refers to a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision of a State such as a town. Under current law, State or local government employees not covered by a public pension plan are, with a few exceptions, required to pay Social Security payroll taxes.)

Social Security coverage for employees covered under a State or local government public pension plan is established through an agreement between the State and the Federal government. All States have the option of electing Social Security coverage for employees by a majority vote in a referendum. If the majority vote is in favor of Social Security coverage, then the entire group, including those voting against such coverage, will be covered by Social Security. If the majority vote is against Social Security coverage, then the entire group, including those voting in favor of such coverage and employees hired after the referendum, will not be covered by Social Security.

In certain States, however, there is an alternative method for electing Social Security coverage. Under this method, rather than the majority of votes determining Social Security coverage for the whole group, employees voting in the referendum may individually determine whether they want Social Security coverage, provided that all newly hired employees of the system are required to participate in Social Security. After the referendum, the retirement system is divided into two groups, one composed of members who elected Social Security coverage plus those hired after the referendum, and the other composed of those who did not elect Social Security coverage. Under Section 218(d)(6)(c) of the Social Security Act, 21 States currently have authority to operate such a divided retirement system.

REASON FOR CHANGE

The governments of the City of Louisville and Jefferson County merged in January 2003, and formed a new political subdivision. Under the provision, once the new political subdivision holds a referendum on Social Security coverage among its employees, each employee would choose whether or not to participate in the Social Security system in addition to their public pension plan. All employees newly hired to the system after the divided system is in place would be covered automatically under Social Security.

Currently, some employees of the new government are covered under Social Security, while others are not. In order to provide fair and equitable coverage to all employees, a divided retirement system, such as that currently authorized in 21 other States, was seen as the best solution. It would allow those who want to keep Social

Security coverage or obtain Social Security coverage to do so, without requiring other current employees to participate in Social Security as well.

Without this provision, upon holding a referendum on Social Security coverage, a majority of votes would determine whether or not the group would participate in Social Security. Since the number of non-covered employees exceeds the number of Social Security-covered employees in the new government, those employees currently covered by Social Security could lose that coverage. The Kentucky General Assembly has adopted a bill that will allow the new divided retirement system to go forward following enactment of this provision.

EXPLANATION OF PROVISION

The new provision permits the State of Kentucky to join the 21 other States in being able to offer a divided retirement system. This system would permit current State and local government workers in a public pension plan to elect Social Security coverage on an individual basis. Those who do not wish to be covered by Social Security would continue to participate exclusively in the public pension plan.

EFFECTIVE DATE

Effective retroactively to January 1, 2003.

L. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD
(Sec. 417 of the Bill)

PRESENT LAW

The Social Security Advisory Board is an independent, bipartisan Board established by the Congress under Section 703 of the Social Security Act. The 7-member Board is appointed by the President and the Congress to advise the President, the Congress, and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs. Section 703(f) of the Social Security Act provides that members of the Board serve without compensation, except that, while engaged in Board business away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code for persons in the Government who are employed intermittently.

REASON FOR CHANGE

Other government advisory boards—such as the Employee Retirement Income Security Act Advisory Council, the Pension Benefit Guaranty Corporation Advisory Committee and the Thrift Savings Plan Board—provide compensation for their members. This provision allows for similar treatment of Social Security Advisory Board members with respect to compensation.

EXPLANATION OF PROVISION

The new provision establishes that compensation for Social Security Advisory Board members will be provided, at the daily rate of

basic pay for level IV of the Executive Schedule, for each day (including travel time) during which the member is engaged in performing a function of the Board.

EFFECTIVE DATE

January 1, 2003.

M. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION

(Sec. 418 of the Bill)

PRESENT LAW

The Government Pension Offset (GPO) was enacted in order to equalize treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spouse and survivor benefits. Where what is known as the “dual-entitlement” rule reduces a spouse or survivor benefit dollar-for-dollar by the worker’s own Social Security retirement or disability benefit, the GPO reduces the Social Security spouse or survivor benefit by two-thirds of the government pension.

However, under what’s known as the “last day rule,” State and local government workers are exempt from the GPO if, on the last day of employment, their job was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System (CSRS), a system that is not covered by Social Security, to the Federal Employee Retirement System (FERS), a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO.

REASON FOR CHANGE

In August 2002, the GAO published a report titled “Social Security Administration: Revision to the Government Pension Offset Exemption Should Be Considered” (GAO-02-950). At the request of Committee on Ways and Means, Subcommittee on Social Security Chairman E. Clay Shaw, Jr., the GAO investigated use of the “last day” exemption to avoid being subject to the GPO. The investigation found that over 4,800 individuals in Texas and Georgia used or planned to use the last day exemption, with over 3,500 in Texas using it in 2002.

In testimony provided to the Subcommittee on Social Security February 27, 2003, the GAO stated that the exemption “allows a select group of individuals with a relatively small investment of work time and only minimal Social Security contributions to gain access to potentially many years of full Social Security spousal benefits.” The GAO also clarified in testimony that a spouse who worked in the private sector, paid payroll taxes for an entire career, and earned a Social Security retirement or disability benefit as a worker would not receive a full spousal benefit. The GAO stated that current usage of last day exemption could cost the Social Security trust funds \$450 million, and that considering the potential for abuse of the exemption and the likelihood of increased use, timely action is needed. This provision to conform their treatment to that of Federal workers was among the recommendations provided by the GAO to address potential abuse of the exemption. A

provision addressing the GPO last-day exemption was also included in President Bush's budget request for 2004.

EXPLANATION OF PROVISION

The new provision requires that State and local government workers be covered by Social Security during their last 5 years of employment in order to be exempt from the GPO.

EFFECTIVE DATE

Effective for applications filed on or after the first day of the first month after the date of enactment. However, the provision would not apply to individuals whose last day of employment for the State or local governmental entity occurred before the end of the 90-day period following the date of enactment. It would also not apply to persons whose last day of employment occurred after the end of the 90-day period following the date of enactment, if during the 90-day period following the date of enactment the person's job was covered by Social Security and remained so until their last day of employment.

Subtitle C. Technical Amendments

N. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD

(Sec. 421 of the Bill)

PRESENT LAW

Section 1143 of the Social Security Act directs "the Secretary of Health and Human Services" to send periodic Social Security Statements to individuals.

REASON FOR CHANGE

The "Social Security Independence and Program Improvements Act of 1994" (P.L. 103-296) made the Social Security Administration an independent agency separate from the Department of Health and Human Services. This provision updates Section 1143 to reflect that change.

EXPLANATION OF PROVISION

The new provision makes a technical correction to this section by inserting a reference to the Commissioner of Social Security in place of the reference to the Secretary of Health and Human Services.

EFFECTIVE DATE

Upon enactment.

O. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS

(Sec. 422 of the Bill)

PRESENT LAW

Section 1456 of the “Small Business Job Protection Act of 1996” (P.L. 104–188) established that certain retirement benefits received by ministers and members of religious orders (such as the rental value of a parsonage or parsonage allowance) are not subject to Social Security payroll taxes under the Internal Revenue Code. However, under Section 211 of the Social Security Act, these retirement benefits are treated as net earnings from self-employment for the purpose of acquiring insured status and calculating Social Security benefit amounts.

REASON FOR CHANGE

P.L. 104–188 provided that certain retirement benefits received by ministers and members of religious orders are not subject to payroll taxes. However, a conforming change was not made to the Social Security Act to exclude these benefits from being counted as wages for the purpose of acquiring insured status and calculating Social Security benefit amounts. This income is therefore not treated in a uniform manner. This provision would conform the Social Security Act to the Internal Revenue Code with respect to such income.

EXPLANATION OF PROVISION

The new provision makes a conforming change to exclude these benefits received by retired clergy from Social Security-covered earnings for the purpose of acquiring insured status and calculating Social Security benefit amounts.

EFFECTIVE DATE

Effective for years beginning before, on, or after December 31, 1994 (same as the effective date of Section 1456 of P.L. 104–188).

P. TECHNICAL CORRECTION RELATING TO DOMESTIC EMPLOYMENT

(Sec. 423 of the Bill)

PRESENT LAW

Current law is ambiguous concerning the Social Security coverage and tax treatment of domestic service performed on a farm. Domestic employment on a farm appears to be subject to two separate coverage thresholds (one for agricultural labor and another for domestic employees).

REASON FOR CHANGE

Prior to 1994, domestic service on a farm was treated as agricultural labor and was subject to the coverage threshold for agricultural labor. According to the SSA, in 1994, when Congress amended the law with respect to domestic employment, the intent was that domestic employment on a farm would be subject to the coverage threshold for domestic employees instead of the threshold for

agricultural labor. However, the current language is unclear, making it appear as if farm domestics are subject to both thresholds.

EXPLANATION OF PROVISION

The new provision clarifies that domestic service on a farm is treated as domestic employment, rather than agricultural labor, for Social Security coverage and tax purposes.

EFFECTIVE DATE

Upon enactment.

Q. TECHNICAL CORRECTION OF OUTDATED REFERENCES

(Sec. 424 of the Bill)

PRESENT LAW

Section 202(n) and 211(a)(15) of the Social Security Act and Section 3102(a) of the Internal Revenue Code of 1986 each contain outdated references that relate to the Social Security program.

REASON FOR CHANGE

Over the years, provisions in the Social Security Act, the Internal Revenue Code and other related laws have been deleted, redesignated or amended. However, necessary conforming changes have not always been made. Consequently, Social Security law contains some outdated references.

EXPLANATION OF PROVISION

The new provision corrects outdated references in the Social Security Act and the Internal Revenue Code by: (1) in Section 202(n) of the Social Security Act, updating references respecting removal from the United States; (2) in Section 211(a)(15) of the Social Security Act, correcting a citation respecting a tax deduction related to health insurance costs of self-employed individuals; and (3) in Section 3102(a) of the Internal Revenue Code of 1986, eliminating a reference to an obsolete 20 day agricultural work test.

EFFECTIVE DATE

Upon enactment.

R. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES

(Sec. 425 of the Bill)

PRESENT LAW

The Social Security Act and the Internal Revenue Code provide that, in the absence of a partnership, all self-employment income from a trade or business operated by a married person in a community property State is deemed to be the husband's unless the wife exercises substantially all of the management and control of the trade or business.

REASON FOR CHANGE

Present law was found to be unconstitutional in several court cases in 1980. Since then, income from a trade or business that is not a partnership in a community property State has been treated the same as income from a trade or business that is not a partnership in a non-community property State—it is taxed and credited to the spouse who is found to be carrying on the business.

This change will conform the provisions in the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States.

EXPLANATION OF PROVISION

Under the new provision, self-employment income from a trade or business that is not a partnership, and that is operated by a married person in a community property State, is taxed and credited to the spouse who is carrying on the trade or business. If the trade or business is jointly operated, the self-employment income is taxed and credited to each spouse based on his or her distributive share of gross earnings.

EFFECTIVE DATE

Upon enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 743.

MOTION TO REPORT THE BILL

The bill, H.R. 743, as amended, was ordered favorably reported by a rollcall vote of 35 yeas to 2 nays (with a quorum being present). The vote was as follows:

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|----------------------|-------|-------|---------|-----------------------|-------|-------|---------|
| Mr. Thomas | X | ..... | ..... | Mr. Rangel | X | ..... | ..... |
| Mr. Crane | X | ..... | ..... | Mr. Stark | X | ..... | ..... |
| Mr. Shaw | X | ..... | ..... | Mr. Matsui | X | ..... | ..... |
| Mrs. Johnson | X | ..... | ..... | Mr. Levin | X | ..... | ..... |
| Mr. Houghton | X | ..... | ..... | Mr. Cardin | X | ..... | ..... |
| Mr. Herger | X | ..... | ..... | Mr. McDermott | X | ..... | ..... |
| Mr. McCrery | X | ..... | ..... | Mr. Kleczka | X | ..... | ..... |
| Mr. Camp | X | ..... | ..... | Mr. Lewis (GA) | X | ..... | ..... |
| Mr. Ramstad | X | ..... | ..... | Mr. Neal ..... | ..... | ..... | ..... |
| Mr. Nussle ..... | ..... | ..... | ..... | Mr. McNulty ..... | ..... | ..... | ..... |
| Mr. Johnson | X | ..... | ..... | Mr. Jefferson | X | ..... | ..... |
| Ms. Dunn | X | ..... | ..... | Mr. Tanner | X | ..... | ..... |
| Mr. Collins | X | ..... | ..... | Mr. Becerra | X | ..... | ..... |
| Mr. Portman | X | ..... | ..... | Mr. Doggett ..... | ..... | X | ..... |
| Mr. English | X | ..... | ..... | Mr. Pomeroy | X | ..... | ..... |
| Mr. Hayworth | X | ..... | ..... | Mr. Sandlin ..... | ..... | X | ..... |
| Mr. Weller | X | ..... | ..... | Ms. Tubbs Jones | X | ..... | ..... |
| Mr. Hulshof | X | ..... | ..... |  |  |  |  |
| Mr. McInnis | X | ..... | ..... |  |  |  |  |
| Mr. Lewis (KY) | X | ..... | ..... |  |  |  |  |
| Mr. Foley ..... | ..... | ..... | ..... |  |  |  |  |
| Mr. Brady | X | ..... | ..... |  |  |  |  |
| Mr. Ryan | X | ..... | ..... |  |  |  |  |

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|------------------|-----|-------|---------|----------------|-----|-----|---------|
| Mr. Cantor | X | ..... | ..... |  |  |  |  |

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. Jefferson, which would modify the Government Pension Offset from two-thirds of the government pension to two-thirds of the amount of the combined government and Social Security benefit exceeding \$2,000 per month (not to exceed the reduction under current law), was defeated by a rollcall vote of 14 yeas to 21 nays. The vote was as follows:

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|----------------------|-------|-----|---------|-----------------------|-------|-------|---------|
| Mr. Thomas | | X | ..... | Mr. Rangel | X | ..... | ..... |
| Mr. Crane | | X | ..... | Mr. Stark | X | ..... | ..... |
| Mr. Shaw | | X | ..... | Mr. Matsui | X | ..... | ..... |
| Mrs. Johnson | | X | ..... | Mr. Levin | X | ..... | ..... |
| Mr. Houghton | | X | ..... | Mr. Cardin | X | ..... | ..... |
| Mr. Herger | | X | ..... | Mr. McDermott | X | ..... | ..... |
| Mr. McCrery | | X | ..... | Mr. Kleczka | X | ..... | ..... |
| Mr. Camp | | X | ..... | Mr. Lewis (GA) | X | ..... | ..... |
| Mr. Ramstad | | X | ..... | Mr. Neal ..... | ..... | ..... | ..... |
| Mr. Nussle | | | | Mr. McNulty ..... | ..... | ..... | ..... |
| Mr. Johnson | | X | ..... | Mr. Jefferson | X | ..... | ..... |
| Ms. Dunn | | | | Mr. Tanner | X | ..... | ..... |
| Mr. Collins | | X | ..... | Mr. Becerra | X | ..... | ..... |
| Mr. Portman | | X | ..... | Mr. Doggett | X | ..... | ..... |
| Mr. English | | X | ..... | Mr. Pomeroy | X | ..... | ..... |
| Mr. Hayworth | | X | ..... | Mr. Sandlin ..... | ..... | ..... | ..... |
| Mr. Weller | | X | ..... | Ms. Tubbs Jones | X | ..... | ..... |
| Mr. Hulshof | | X | ..... |  |  |  |  |
| Mr. McInnis | | X | ..... |  |  |  |  |
| Mr. Lewis (KY) | | X | ..... |  |  |  |  |
| Mr. Foley | | | | | | | |
| Mr. Brady | | X | ..... |  |  |  |  |
| Mr. Ryan | | X | ..... |  |  |  |  |
| Mr. Cantor | | X | ..... |  |  |  |  |

An amendment by Mr. Stark, which would reduce the Government Pension Offset of Social Security spousal and survivor's benefits from two-thirds to one-third of the government pension, was defeated by a roll call vote of 15 yeas to 22 nays. The vote was as follows:

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|--------------------|-------|-----|---------|----------------------|-------|-------|---------|
| Mr. Thomas | | X | ..... | Mr. Rangel | X | ..... | ..... |
| Mr. Crane | | X | ..... | Mr. Stark | X | ..... | ..... |
| Mr. Shaw | | X | ..... | Mr. Matsui | X | ..... | ..... |
| Mrs. Johnson | | X | ..... | Mr. Levin | X | ..... | ..... |
| Mr. Houghton | | X | ..... | Mr. Cardin | X | ..... | ..... |
| Mr. Herger | | X | ..... | Mr. McDermott | X | ..... | ..... |
| Mr. McCrery | | X | ..... | Mr. Kleczka | X | ..... | ..... |
| Mr. Camp | | X | ..... | Mr. Lewis (GA) | X | ..... | ..... |
| Mr. Ramstad | | X | ..... | Mr. Neal ..... | ..... | ..... | ..... |
| Mr. Nussle | | | | Mr. McNulty ..... | ..... | ..... | ..... |
| Mr. Johnson | | X | ..... | Mr. Jefferson | X | ..... | ..... |
| Ms. Dunn | | X | ..... | Mr. Tanner | X | ..... | ..... |
| Mr. Collins | | X | ..... | Mr. Becerra | X | ..... | ..... |
| Mr. Portman | | X | ..... | Mr. Doggett | X | ..... | ..... |
| Mr. English | | X | ..... | Mr. Pomeroy | X | ..... | ..... |
| Mr. Hayworth | | X | ..... | Mr. Sandlin | X | ..... | ..... |

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|----------------------|-----|-----|---------|-----------------------|-----|-------|---------|
| Mr. Weller | | X | ..... | Ms. Tubbs Jones | X | ..... | ..... |
| Mr. Hulshof | | X | ..... |  |  |  |  |
| Mr. McInnis | | X | ..... |  |  |  |  |
| Mr. Lewis (KY) | | X | ..... |  |  |  |  |
| Mr. Foley | | | | | | | |
| Mr. Brady | | X | ..... |  |  |  |  |
| Mr. Ryan | | X | ..... |  |  |  |  |
| Mr. Cantor | | X | ..... |  |  |  |  |

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 743 as reported:

The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states the bill will reduce direct spending and increase revenues, resulting in \$655 million in savings to the unified budget.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 20, 2003.

Hon. WILLIAM "BILL" M. THOMAS,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 743, the Social Security Protection Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathy Ruffing.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 743—Social Security Protection Act of 2003

Summary: H.R. 743 would strengthen oversight of representative payees (people who handle benefit checks for others, such as children or mentally impaired adults), bar Social Security benefits to

fugitives, revamp the Social Security Administration's (SSA's) procedures for paying attorneys who represent successful claimants, and tighten the rules for some state and local retirees who switch jobs briefly in order to boost their Social Security benefits. In all, the bill contains three dozen provisions, although many would have little or no budgetary effect.

On balance, enacting H.R. 743 would lead to small net costs in 2004 but net savings thereafter—by amounts that grow from \$16 million in 2005 to \$147 million in 2013. In total, CBO estimates that enacting the bill would trim direct spending and boost revenue by a combined \$655 million over the 2004–2013 period. About two-thirds of those effects are in Social Security, which is off-budget.

H.R. 743 would also affect discretionary spending. CBO estimates that implementing the bill would cost SSA \$15 million to \$20 million a year through 2010, and smaller amounts after that, for extra enforcement and processing activities.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the requirements of that act any provision that relates to the Old-Age, Survivors, and Disability Insurance program (OASDI) under title II of the Social Security Act. Many provisions of H.R. 743 would fall within that exclusion. The other provisions of the bill contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. They do contain private-sector mandates as defined in UMRA. CBO estimates that the costs to the private sector of those mandates would not exceed the threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 743 shown in the following table. The costs of this legislation fall within budget functions 570 (Medicare), 600 (income security), and 650 (Social Security).

| | | By fiscal year, in millions of dollars— | | | | | | | | | |
|--------------------------------------|-----|---|------|------|------|------|------|------|------|------|------|
| | | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
| CHANGES IN DIRECT SPENDING (OUTLAYS) | | | | | | | | | | | |
| Title I. Protection of | | | | | | | | | | | |
| beneficiaries: | | | | | | | | | | | |
| Authority to re- | | | | | | | | | | | |
| issue benefits | | | | | | | | | | | |
| misused by | | | | | | | | | | | |
| organizational | | | | | | | | | | | |
| representative | | | | | | | | | | | |
| payees: | | | | | | | | | | | |
| OASDI | | | | | | | | | | | |
| benefits | 2 | * | * | * | * | * | * | * | * | * | * |
| SSI bene- | | | | | | | | | | | |
| fits | 1 | * | * | * | * | * | * | * | * | * | * |
| Title II. Program pro- | | | | | | | | | | | |
| tections: | | | | | | | | | | | |
| Denial of bene- | | | | | | | | | | | |
| fits to fugi- | | | | | | | | | | | |
| tives: | | | | | | | | | | | |
| OASDI | | | | | | | | | | | |
| benefits | –10 | –30 | –44 | –55 | –59 | –61 | –63 | –66 | –68 | –70 | |
| Medicare .. | –1 | –4 | –11 | –15 | –19 | –22 | –23 | –25 | –25 | –27 | |

| | By fiscal year, in millions of dollars— | | | | | | | | | |
|--|---|------|------|------|------|------|------|------|-------|-------|
| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Title III. Attorney fee payment system improvements: | | | | | | | | | | |
| Cap of \$75 (indexed) on processing charges in title II: OASDI receipts | 12 | 24 | 25 | 27 | 28 | 29 | 31 | 32 | 33 | 34 |
| Temporary extension of attorney-fee payment system to title XVI: SSI receipts | — 1 | — 4 | — 4 | — 4 | — 4 | — 5 | — 5 | * | * | * |
| Title IV. Miscellaneous and technical amendments: | * | * | * | * | * | * | * | * | * | 1 |
| 60-month employment requirement for exemption from Government Pension Offset: OASDI benefits | * | * | — 1 | — 2 | — 4 | — 8 | — 15 | — 26 | — 49 | — 80 |
| Permission for Kentucky to operate divided retirement systems: OASDI benefits | * | * | * | * | * | * | * | * | * | 1 |
| Total changes in direct spending: | | | | | | | | | | |
| On-budget | * | — 8 | — 15 | — 19 | — 23 | — 26 | — 28 | — 25 | — 25 | — 27 |
| Off-budget (OASDI) | 4 | — 7 | — 20 | — 30 | — 35 | — 40 | — 48 | — 59 | — 83 | — 115 |
| Total | 4 | — 14 | — 35 | — 49 | — 58 | — 66 | — 75 | — 84 | — 109 | — 142 |

CHANGES IN REVENUES

| | | | | | | | | | | |
|--|-----|---|---|---|---|---|---|---|---|---|
| Title IV. Miscellaneous and technical amendments: | | | | | | | | | | |
| Permission for Kentucky to operate divided retirement systems: | | | | | | | | | | |
| OASDI revenues .. | 1 | 1 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 5 |
| Other revenues | * | * | * | * | * | * | * | * | * | * |
| Clarification of eligibility for Work Opportunity Credit | — 2 | * | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total changes in revenues: | | | | | | | | | | |
| On-budget | — 2 | * | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| By fiscal year, in millions of dollars— | | | | | | | | | | |
|--|------|------|------|------|------|------|------|------|------|------|
| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Off-budget (OASDI) | 1 | 1 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 5 |
| Total ... | –1 | 1 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 5 |
| NET CHANGES IN DIRECT SPENDING AND REVENUES (EFFECT ON DEFICITS) | | | | | | | | | | |
| On-budget | 2 | –8 | –15 | –19 | –23 | –26 | –28 | –25 | –25 | –27 |
| Off-budget (OASDI) ... | 4 | –8 | –21 | –32 | –38 | –43 | –51 | –63 | –88 | –120 |
| Total | 5 | –16 | –37 | –52 | –61 | –69 | –79 | –88 | –113 | –147 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION (OUTLAYS) | | | | | | | | | | |
| OASDI administrative expenses | 4 | 3 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 4 |
| SSI administrative expenses | 14 | 13 | 13 | 14 | 15 | 16 | 16 | 2 | 2 | 2 |
| Total | 18 | 17 | 15 | 16 | 17 | 18 | 19 | 5 | 5 | 6 |

Notes.—Details may not add to totals because of rounding.

OASDI = Old-Age, Survivors, and Disability Insurance (title II); SSI = Supplemental Security Income (title XVI).

*= Less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 743 will be enacted in September 2003.

Direct spending and revenues

Title I. Nearly seven million people—three million adults and four million children—who get Social Security, Supplemental Security Income (SSI), or both have their checks sent to a representative payee who helps manage the beneficiary’s finances. The payee must also report certain events, such as changes in the beneficiary’s income or school attendance, to SSA. In about 85 percent of cases, a family member serves as a representative payee. But an attorney or guardian, a social service agency, an institution, or other nonrelative may act as a payee, especially for a disabled adult. About 45,000 organizations serve as representative payees for about 750,000 clients. SSA monitors representative payees by requiring annual reports and by conducting on-site reviews every three years of certain payees who serve a large number of beneficiaries.

H.R. 743 would direct SSA to certify annually that social service agencies meet licensing and bonding requirements and to conduct periodic on-site inspections of more representative payees. It would enhance SSA’s ability to recover misused funds and to impose civil monetary penalties.

Most of the provisions would have negligible effects on benefit payments or recoveries. One section, however, would require SSA to pay beneficiaries any amounts that had been misused by an organizational representative payee. (Currently, such claimants must show negligence by SSA.) “Misuse” means converting funds to the payee’s own use or any purpose other than the use and benefit of the client. The provision would be retroactive to January 1, 1995.

According to SSA, representative payees misuse about \$3 million in benefits each year. Although SSA’s Inspector General (IG) has found weaknesses in internal controls of organizational payees, few of the resulting errors would constitute misuse. Because organizations handle about 12 percent of the dollars flowing through rep-

representative payees, CBO estimates that reimbursing nine years' worth of misused benefits would cost \$3 million in 2004. Extra costs in 2005 through 2013 would be negligible.

Title II, H.R. 743 would forbid fugitive felons and people fleeing prosecution from collecting Social Security benefits. CBO estimates that this policy would reduce Social Security spending by \$10 million in 2004 and \$525 million over the 2004–2013 period. CBO also estimates that the policy would save \$172 million in Medicare over the 10 years.

CBO used data from a report by SSA's Inspector General to estimate those savings. The IG extrapolated from a sample of about 400 cases in 10 states to estimate that fugitives received between \$40 million and \$180 million in Social Security benefits in 1999. The midpoint of that range (\$110 million) reflected an estimated 15,000 fugitives with an average benefit of almost \$600 per month. Assuming that their number and average benefit keep pace with the overall program, CBO extrapolated that total to \$130 million in 2004 and \$175 million in 2013.

CBO judges, however, that several obstacles would keep savings from reaching those figures. First, large-scale enforcement poses challenges—a fact highlighted by the IG's work with a small sample. By tapping the National Crime Information Center (NCIC) and obtaining data directly from some states that do not report fully to the NCIC, SSA has access to more than half of fugitive warrants; some, though, lack key information (such as full name and Social Security number) for an accurate match. Illustrating that hurdle, an IG study of the SSI program—three years after fugitives became ineligible—found that about 20 percent of ineligible recipients were suspended from the rolls promptly, another 30 percent were suspended eventually, and 50 percent were apparently missed. That study covered years before 2000, when SSA began matching data with the NCIC; nevertheless, the findings lead CBO to assume that matching will ultimately be about 60 percent effective.

Second, some people spotted by computer matching will probably clear their records when their benefits stop, resulting in little or no long-term savings. CBO found that many warrants are dated—about 15 percent of state warrants, for example, are more than 10 years old—and most are for nonviolent offenses such as drug possession and probation or parole violation. In such cases, “fugitives” with no subsequent convictions may face nothing worse than a suspended sentence or probation. Faced with a lifetime cutoff from Social Security, CBO assumes that some would run that risk. To account for such cases, CBO subtracted another one-third from potential savings, bringing the result to 40 percent of the IG's figure. CBO assumes those savings are attainable about two years after enactment; initial savings are more modest, as SSA signs data-sharing agreements with more states and writes regulations.

CBO assumes that 80 percent of fugitives who would be affected by this provision are disabled beneficiaries who qualify for Medicare. If they lost their health benefits too, extra savings in 2013 (when their average Medicare benefit—about \$9,600—almost matches their assumed Social Security benefit, \$9,900) could reach \$54 million. However, they would not lose Medicare eligibility. Technically their Social Security benefit would be suspended, not terminated. A suspension does not erase Medicare eligibility. Some

Medicare savings would probably occur simply because beneficiaries fail to realize they remain eligible, fear using their Medicare card, or stop paying the premium (which is usually withheld from Social Security checks) for Part B coverage. CBO assumes that the resulting drop in use of Medicare benefits would save about half as much as an outright ban, or about \$27 million in 2013.

Title III. Many Social Security claimants, especially disability applicants who win benefits on appeal, are represented by attorneys. A standard fee agreement between attorney and client pledges that the attorney will receive 25 percent of any past-due benefits up to a cap of \$5,300. (By the time someone wins on appeal, past-due benefits typically amount to about 18 months' worth.) That cap stood at \$4,000 for more than a decade until SSA raised it in 2002. When SSA awards OASDI benefits in such cases, it pays the attorney fee directly from the past-due amounts. In contrast, when SSA awards SSI benefits only, or denies all benefits, the attorney must seek his or her fee from the client. Processing attorney fees is a labor-intensive chore, and in 1999 the Congress permitted SSA to withhold up to 6.3 percent of the amounts paid to offset some of those costs.

SSA pays attorney fees in about 200,000 OASDI cases and concurrent (OASDI and SSI) cases a year. The average fee, still dampened by the \$4,000 lid, is now about \$2,700, and the average processing charge about \$170. By 2013, CBO expects that annual volume will be about 240,000, the average fee about \$3,600, and hence the average charge about \$225. H.R. 743 proposes to cap the charge at \$75 with future adjustments for inflation. That would erase more than half of expected receipts, a loss of \$34 million in 2013. CBO estimates that over the 2004–2013 period the proposed cap would cost \$275 million.

H.R. 743 also proposes to extend the attorney-fee system temporarily to SSI, starting nine months after enactment and ending with agreements for representation that are signed five years later. Because attorneys are most active in appealed cases, which may take a year to decide, those five years actually translate into more than six years of budgetary effects. SSA now approves, though it does not disburse, attorney fees in about 55,000 SSI-only cases a year. The average fee is about \$1,900. (Because SSI benefits are lower than Disability Insurance's (DI's), the average fee—which cannot exceed 25 percent of past-due benefits—is also lower.) By 2010, CBO estimates those figures would be about 60,000 and \$2,200 respectively. Extending the payment system, including the 6.3 percent processing charge, to SSI would bring in about \$9 million. Capping the charge at \$87 (the initial \$75, adjusted for inflation), as H.R. 743 also proposes, would generate \$5 million. Total collections over the 10-year period would be \$26 million.

Title IV. This title, labeled “Miscellaneous and Technical Amendments,” contains two provisions with significant budgetary effects. Both would affect state and local government employees.

60-month employment requirement for exemption from Government Pension Offset. State and local governments have been permitted to join Social Security since the 1950s; since 1983, jurisdictions that had already joined have been barred from withdrawing. The Census Bureau counts 14 million active members and 6 mil-

lion beneficiaries in 2,200 state and local government retirement plans. About one-quarter are not covered by Social Security.

Under current law, a retiree with a pension from noncovered state or local employment cannot collect a full Social Security benefit as a spouse or widow(er) of a covered worker. Instead, the government pension offset (GPO) trims the Social Security benefit by \$2 for every \$3 of the noncovered pension—often erasing the Social Security benefit entirely. The GPO's drafters liken that to the way Social Security treats other spouses. A wife, for example, cannot collect her own retired-worker benefit plus an extra 50 percent of her husband's benefit; instead, she gets the larger amount. In that analogy, two-thirds of the pension from noncovered work is akin to a retired-worker benefit.

H.R. 743 would limit a tactic that some public employees are using to skirt the GPO. The offset applies to state and local retirees whose last day of employment under their pension plan was not covered. The General Accounting Office (GAO) reports that some workers have learned that by switching jobs for a short time—sometimes just one day—they can avoid a lifetime of GPO-related reductions. Specifically, GAO found 4,800 such transfers through June 2002. Almost all were in Texas. H.R. 743 proposes to replace the “last-day” rule with a 60-month requirement—the same rule that applies to federal civil servants.

GPO had to judge how the job-switching detected by GAO might evolve over time. Of the 4,800 transfers that GAO found, 3,500 occurred in 2002 alone, where they amounted to a quarter of retirements in the Teachers' Retirement System of Texas that year. GAO found only a handful of cases outside Texas but voiced concern that the practice would spread.

To gauge that possibility, CBO looked at retirement plans in the six states—California, Colorado, Illinois, Louisiana, Massachusetts, and Ohio—that with Texas account for 75 percent of noncovered employees. CBO concluded that conditions in Texas are uniquely favorable to “last-day” switches. Texas combines a huge noncovered sector, a small covered sector, and a statewide plan that recognizes service in both. In other states, employees who sought a covered job would have to change occupations (for example, from law enforcement to teacher) and forfeit some advantages of their original plan; in others, such as Ohio and Massachusetts, no covered positions exist. California, with its mix of covered and noncovered jurisdictions, bears the closest resemblance to Texas but has fewer noncovered jobs and thus fewer employees with an incentive to switch. If the “last-day” rule remains, states could face pressure to amend their plans to make such transfers easier. But plan amendments are complex and time-consuming.

Under current law, CBO assumes that annual transfers spurred by the “last-day” rule will climb to 7,000 in 2004—twice the number in 2002, enough to accommodate further growth in Texas (where the practice clearly had not peaked) and some spillover to other states. Under H.R. 743, significant savings in Social Security would follow in about seven years. That lag stems from the programs' contrasting rules for eligibility: a typical retiree under the Texas teachers' plan qualifies for a pension at age 55 and (if the GPO does not erase it) for Social Security at age 62. Thus, the first batch of 7,000 annuitants who retire in calendar 2004 would reach

62 in 2011. Spouses and widow(er)s affected by the GPO in December 2001 saw their Social Security reduced by an average of \$312 and \$479, respectively. Adjusting those figures for inflation and for the age and sex of the affected group led CBO to assume those 7,000 would lose an average of \$525, or \$4 million in December 2011. Savings in 2001 are just \$26 million because the fiscal year ends in September and birthdays occur throughout the year. By December 2013, three cohorts of retirees push the monthly savings up to \$10 million; savings in fiscal year 2013 equal \$80 million.

Real-life cases would be more varied than these simple examples. Some annuitants retire after 55 (and reach 62 years old before 2011); some are widowed (and qualify for Social Security at age 60, not at age 62); and others must wait for a younger spouse to reach 62 years old. But these typical cases illustrate why CBO estimates small savings through 2010 and rapidly growing amount after that.

Permission for Kentucky to operate divided retirement systems. Under section 218 of the Social Security Act, 21 state are allowed to operate retirement systems in which some but not all employees are covered under Social Security. In divided systems, new employees must pay Social Security tax, but employees already on the payroll may choose their coverage. H.R. 743 would add Kentucky to the list. A planned merger of two Louisville-area fire and police departments apparently spurs the provision. CBO assumes that 200 of the 1,300 workers affected would choose Social Security, and 60 or so new hires each year would add to their ranks. Extra Social Security taxes would grow from \$1 million in 2004 to \$5 million in 2013. Workers who switch coverage can avoid or soften the GPO and the windfall elimination provision, another rule that limits retired-worker (rather than spouse or survivor) benefits when beneficiaries get a pension from noncovered employment. Only a minority of the newly covered employees, through, would qualify for Social Security in the next 10 years, and CBO estimates extra costs of \$1 million in 2013.

Other provisions. H.R. 743 would correct sections of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170) that govern SSA's research and demonstration projects. It would allow SSA to continue waiving certain provisions of law, when appropriate, for projects initiated before December 2004. Currently such waivers will expire abruptly on that date, even for projects already launched. SSA does not expect to use such waivers extensively other than for the \$1-for-\$2 demonstrations (see below), so CBO ascribes a negligible cost.

DI beneficiaries face limits on their earnings. Applicants who earn more than \$800 a month (labeled substantial gainful activity, or SGA) in 2003 cannot qualify for DI; beneficiaries who make more than that for a nine-month trial work period and three-month grace period lose their entire check. The 1999 law directed SSA to conduct demonstrations in which checks would be reduced by \$1 for each \$2 of earnings over certain thresholds. But that law left unclear how the projects would be funded. H.R. 743 clarifies that SSA would pay benefits from the trust fund and other costs—for the design, conduct, and evaluation of the demonstrations—from its appropriation for administrative expenses.

In the meantime, statisticians and other experts have advised SSA to conduct \$1-for-\$2 demonstrations narrower in scope than

CBO assumed in 1999. In particular, they believe SSA cannot realistically measure “induced filers” via the demonstrations. Induced filers—workers with severe impairments who would not otherwise have applied for benefits but who are attracted by a more liberal treatment of earnings—dominated CBO’s earlier analyses of the demonstrations’ costs. (As SSA’s plans became clearer, CBO removed those estimated costs from its baseline.) CBO expects that targeting the experiments only at a sample of current recipients would lead to little net change in benefits.

H.R. 743 would broaden the Work Opportunity Tax Credit to cover people who use a ticket for vocational rehabilitation (VR) under the 1999 law. That credit, which expires after December 2003, allows employers to subtract up to 40 percent of the first \$6,000 of wages from income tax when they hire members of targeted groups. People referred by state VR agencies are one such group; H.R. 743 would add DI and SSI beneficiaries who choose other VR providers, such as private firms or nonprofit organizations. The first tickets were distributed in 2002 and nationwide implementation will take three years. Because the tickets program is still in its early stages, the Joint Committee on Taxation estimates that broadening eligibility for the tax credit would reduce revenues by \$2 million in 2004.

Title IV would expand eligibility for widows’ and widowers’ benefits in narrow circumstances. To collect Social Security on a deceased worker’s record, a widow or widower must either have been married to the worker for nine months or be actively caring for the worker’s child. Lawmakers recently learned about an unusual case in which a worker could not marry his longtime companion because state law forbade him from divorcing his wife, who was in a mental institution. When his wife’s death finally permitted him to remarry, he was already terminally ill and died a few months later. H.R. 743 would waive the duration-of-marriage requirement in those rare circumstances. Only one such case has come to light and CBO assumes that the provision would have little cost.

Spending subject to appropriation

CBO estimates that implementing H.R. 743 would cost SSA \$15 million to \$20 million a year in extra enforcement and processing expenses through 2010. Extending the attorney-fee program to SSI is the biggest piece, accounting for \$11 million to \$14 million a year.

Under H.R. 743, SSA would split the first SSI check into at least two parts—one for the attorney and one for the beneficiary—as it does in DI. (A third party—the state—may also claim a share if it paid benefits under a so-called interim assistance program.) Based on a GAO report, CBO assumes that each DI case that involves attorney fees will cost SSA about \$235 in 2004. About \$50 of that is for fee approval (which SSA already performs in SSI) but \$185 is for fee processing (which SSA does not do in SSI). Multiplying by the assumed volume of cases yields expected costs of \$11 million in 2004 and slightly more through 2010, when the provision would expire.

Other provisions—chiefly those that would mandate more on-site inspections, bonding and licensing, and related scrutiny of representative payees and require SSA to produce new studies and re-

ports—would cost an estimated \$8 million in 2004 and \$4 million to \$6 million a year thereafter. The SSI and DI programs each would account for about half of those amounts.

On-budget effects on direct spending and revenues: The Congressional Budget Act labels Social Security “off-budget” and excludes it from the President’s budget, the House and Senate budget resolutions, and the Balanced Budget and Emergency Deficit Control Act of 1985. The net changes in governmental receipts (i.e., revenues) and outlays from direct spending—excluding Social Security—over the 2004–2013 period are shown in the following table.

| | By fiscal year, in millions of dollars— | | | | | | | | | |
|---------------------------|---|------|------|------|------|------|------|------|------|------|
| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Changes in outlays | 0 | –8 | –15 | –19 | –23 | –26 | –28 | –25 | –25 | –27 |
| Changes in receipts | –2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Intergovernmental and private-sector impact: Section 4 of the Unfunded Mandates Reform Act excludes from the provisions of that act any provision in a bill that relates to the Old-Age, Survivors, and Disability Insurance program under title II of the Social Security Act. The provisions of H.R. 743 that amend title II would fall within that exclusion.

Other provisions of the bill contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. They do, however, contain private-sector mandates as defined in UMRA. Section 204 would prohibit private entities from charging a fee for certain products and services that are available for free from SSA unless, at the time the offer is made, they provide a statement to that effect. Section 302 would impose a processing charge on private attorneys to whom SSA would disburse fees related to their representation of successful SSI claimants. CBO estimates that the costs to the private sector of those mandates would not exceed the threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

Previous CBO estimate: On March 4, CBO transmitted a cost estimate for the introduced version of H.R. 743. That estimate cited a combined \$649 million in direct spending reductions and revenue increases over the 2004–2013 period. The version of the bill approved by the Committee on Ways and Means on March 13 differs slightly from the introduced version. Changes in the attorney-fee provisions—rounding the future cap on processing charges to the next lower \$1 (rather than \$10) and extending the program to SSI for five years (rather than three)—would add \$32 million to SSA’s receipts over the 2004–2013 period. CBO changed its estimate of the Medicare savings that would stem from the ban on Social Security benefits for fugitives, shrinking them by \$25 million. The earlier estimate had assumed incorrectly that the ban on Social Security benefits also led to a ban on Medicare benefits. In total, CBO judges that H.R. 743 as ordered reported would trim direct spending and boost revenues by a combined \$655 million over the 10-year period.

Estimate prepared by: Federal Spending: Kathy Ruffing; Federal Revenues: Edward Harris and Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Leo Lex; and Impact on the Private Sector: Ralph Smith.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the need for this legislation resulted from hearings conducted by the Subcommittee on Social Security in the 106th, 107th, and 108th Congresses. Details of these hearings are included in Title I. Summary and Background, Part C. Legislative History.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 743 the bill contains measures that authorize funding for improving protection of beneficiaries with representative payees; addressing waste, fraud, and abuse in the program; enhancing provisions under the Ticket to Work and Work Incentives Improvement Act; as well as providing compensation to the Social Security Advisory Board. These measures will expand the Social Security Administration's ability to meet its stated goals of (1) ensuring the integrity of Social Security programs with zero tolerance for fraud and abuse; and, (2) promoting valued, strong, and responsive Social Security programs and conducting effective policy development, research, and program evaluation.

Through reporting requirements in this legislation, as well as reporting on achievement of performance objectives and measures laid out in the Social Security Administration's Annual Performance and Accountability Report, Congress and the Administration will be able to assess achievement of the related program objectives, including: (1) aggressively deter, identify, and resolve fraud; (2) increasing the number of SSDI and SSI disability beneficiaries who achieve steady employment and no longer receive cash benefits; and (3) improving the accuracy of processing post entitlement events.

C. CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with Section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments. The Committee has determined that the bill does contain Federal mandates on the private sector. However, those mandates would not exceed the threshold established by Section 4 of the Unfunded Mandates Reform Act.

E. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * *

AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

Old Age Insurance Benefits

SEC. 202. (a) * * *

Wife's Insurance Benefits

(b)(1) * * *

* * * * *

(4)(A) The amount of a wife's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) **[if, on]** *if, during any portion of the last 60 months of such service ending with the last day she was employed by such entity—*

(i) * * *

* * * * *

Husband's Insurance Benefits

(c)(1) * * *

(2)(A) The amount of a husband's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) **[if, on]** *if, during any portion of the last 60 months of such service ending with the last day he was employed by such entity—*

(i) * * *

* * * * *

Widow's Insurance Benefits

(e)(1) * * *

* * * * *

(7)(A) The amount of a widow's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) **[if, on]** *if, during any portion of the last 60 months of such service ending with the last day she was employed by such entity—*

(i) * * *

* * * * *

Widower's Insurance Benefits

(f)(1) * * *

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower (or surviving divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) **if, on** *if, during any portion of the last 60 months of such service ending with the last day he was employed by such entity—*

(i) * * *

* * * *

Mother's and Father's Insurance Benefits

(g)(1) * * *

* * * *

(4)(A) The amount of a mother's or father's insurance benefit for each month (as determined after application of the provisions of subsection (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) **if, on** *if, during any portion of the last 60 months of such service ending with the last day the individual was employed by such entity—*

(i) * * *

* * * *

Termination of Benefits Upon **Deportation** *Removal* of Primary Beneficiary

(n)(1) If any individual is (after the date of enactment of this subsection) **deported under section 241(a) (other than under paragraph (1)(C) or (1)(E) thereof)** *removed under section 237(a) (other than paragraph (1)(C) thereof) or 212(a)(6)(A) of the Immigration and Nationality Act*, then, notwithstanding any other provisions of this title—

(A) no monthly benefit under this section or section 223 shall be paid to such individual, on the basis of his wages and self employment income, for any month occurring (i) after the month in which the Commissioner of Social Security is notified by the Attorney General that such individual has been so **deported** *removed*, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

* * * *

(2) As soon as practicable after the **deportation** *removal* of any individual **under any of the paragraphs of section 241(a) of the**

Immigration and Nationality Act (other than under paragraph (1)(C) or (1)(E) thereof) under any of the paragraphs of section 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) thereof) or under section 212(a)(6)(A) of such Act, the Attorney General shall notify the Commissioner of Social Security of such **deportation removal**.

(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of **deportation removal** has been issued under **paragraph (19) of section 241(a) subparagraph (D) of section 237(a)(4)** of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been **deported removed** under such **paragraph (19) subparagraph (D)** as of the date on which such order became final.

* * * * *

Limitation on Payments to **Prisoners and Certain Other Inmates of Publicly Funded Institutions** *Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees*

(x)(1)(A) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual for any month ending with or during or beginning with or during a period of more than 30 days throughout all of which such individual—

(i) * * *

(ii) is confined by court order in an institution at public expense in connection with—

(I) * * *

* * * * *

(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence), **[or]**

(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding**].**

(iv) *is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State, or*

(v) *is violating a condition of probation or parole imposed under Federal or State law.*

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv) or (v), the Commissioner may, for good cause shown, pay such withheld benefits to the individual.

* * * * *

(3)(A) * * *

* * * * *

(C) *Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—*

(i) *the beneficiary—*

(I) *is described in clause (iv) or (v) of paragraph (1)(A); and*

(II) *has information that is necessary for the officer to conduct the officer's official duties; and*

(ii) *the location or apprehension of the beneficiary is within the officer's official duties.*

* * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

* * * * *

(g) Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Se-

curity made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, **[and a transcript]** *and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript* of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

* * * * *

Representative Payees

(j)(1) * * *

(2)(A) * * *

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) * * *

* * * * *

(III) determine whether such person has been convicted of a violation of section 208, 811, or 1632, **[and]**

(IV) *obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,*

(V) *obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and*

[(IV)] (VI) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 807(a), or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title, title VIII, or title XVI.

* * * * *

(iii) *Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written re-*

quest of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 202(x)(1)(A)(iv),

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) * * *

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in [subparagraph (B)(i)(IV),,] subparagraph (B)(i)(VI) the designation of such person as a representative payee has been revoked pursuant to section 807(a), or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) has previously been terminated as described in [section 1631(a)(2)(B)(ii)(IV)] section 1631(a)(2)(B)(ii)(VI), [or]

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration[.],

(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

(V) such person is person described in section 202(x)(1)(A)(iv).

* * * * *

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to—

(I) [a community-based nonprofit social service agency licensed or bonded by the State] a certified community-based nonprofit social service agency (as defined in paragraph (10)),

* * * * *

(3)(A) * * *

* * * * *

(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

[(E)] (F) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) * * *

* * * * *

[(F)] (G) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and [community-based nonprofit social service agencies] *certified community-based nonprofit social service agencies (as defined in paragraph (10))* which are qualified to serve as representative payees pursuant to this subsection or section 807 or 1631(a)(2) and which are located in the area served by such servicing office.

(4)(A)(i) [A] *Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—*

(I) * * *

(II) \$25.00 per month (\$50.00 per month in any case in which the individual is described in paragraph(1)(B)).

[The Secretary] *A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A), except that any amount so adjusted that is not a multiple of \$1.00 shall be rounded to the nearest multiple of \$1.00.*

* * * * *

(B) For purposes of this paragraph, the term “qualified organization” means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or [any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee] *any certified community-based nonprofit social service agency (as defined in paragraph (10))*, if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) * * *

* * * * *

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. *In any case in which a representative payee that—*

(A) is not an individual (regardless of whether it is a “qualified organization” within the meaning of paragraph (4)(B)); or
 (B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

[(6) The Commissioner of Social Security shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.]

(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (10) of this subsection or section 1631(a)(2)(I)); or

(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(i) the number of such reviews;

(ii) the results of such reviews;

(iii) the number of cases in which the representative payee was changed and why;

(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(v) the number of cases discovered in which there was a misuse of funds;

(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(viii) such other information as the Commissioner deems appropriate.

(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

[(7)] (8) For purposes of this subsection, the term "benefit based on disability" of an individual means a disability insurance benefit of such individual under section 223 or a child's, widow's, or widower's insurance benefit of such individual under section 202 based on such individual's disability.

(9) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this paragraph.

(10) For purposes of this subsection, the term "certified community-based nonprofit social service agency" means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in such State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent

audit on such agency which may have been performed since the previous certification.

* * * * *

REPRESENTATION OF CLAIMANTS

SEC. 206. (a)(1) The Commissioner of Social Security may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. *Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.* The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Commissioner of Social Security under this title, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this title, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the pre-

ceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

* * * * *

(d) ASSESSMENT ON ATTORNEYS.—

(1) * * *

(2) AMOUNT.—

(A) The amount of an assessment under paragraph (1) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be so certified by subsection (a)(4) or (b)(1) before the application of this subsection, by the percentage specified in subparagraph (B), *except that the maximum amount of the assessment may not exceed the greater of \$75 or the adjusted amount as provided pursuant to the following two sentences. In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.*

* * * * *

PENALTIES

SEC. 208. (a) * * *

(b)(1) *Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.*

(2) *Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Social Security Administration shall be considered the victim.*

(3) *If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.*

[(b)] (c) Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that

full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

[(c)] (d) Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j). For the purpose of subsection (a)(7), the terms “social security number” and “social security account number” mean such numbers as are assigned by the Commissioner of Social Security under section 205(c)(2) whether or not, in actual use, such numbers are called social security numbers.

[(d)] (e)(1) Except as provided in paragraph (2), an alien—

(A) * * *

* * * * *

DEFINITION OF WAGES

SEC. 209. (a) For the purposes of this title, the term “wages” means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1) * * *

* * * * *

(6)(A) * * *

(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service [described in section 210(f)(5)] *on a farm operated for profit*), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;

* * * * *

DEFINITION OF EMPLOYMENT

SEC. 210. For the purposes of this title—

Employment

(a) * * *

* * * * *

Agricultural Labor

(f) The term “agricultural labor” includes all service performed—

(1) * * *

* * * * *

(5) On a farm operated for profit if such service is not in the course of the employer’s trade or business [or is domestic service in a private home of the employer].

* * * * *

SELF-EMPLOYMENT

SEC. 211. For the purposes of this title—

Net Earnings From Self-Employment

(a) The term “net earnings from self-employment” means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) * * *

* * * * *

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, [all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;] *the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;*

* * * * *

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to earned income from sources without the United States) of the Internal Revenue Code of 1986, *but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires;*

* * * * *

(15) The deduction under **section 162(m)** *section 162(l)* (relating to health insurance costs of self-employed individuals) shall not be allowed.

* * * * *

OTHER DEFINITIONS

SEC. 216. For the purposes of this title—

Spouse; Surviving Spouse

(a) * * *

* * * * *

Widow

(c)(1) The term “widow” (except when used in the first sentence of section 202(i)) means the surviving wife of an individual, but only if **[(1)]** (A) she is the mother of his son or daughter, **[(2)]** (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, **[(3)]** (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, **[(4)]** (D) she was married to him at the time both of them legally adopted a child under the age of eighteen, **[(5)]** (E) *except as provided in paragraph (2)*, she was married to him for a period of not less than nine months immediately prior to the day on which he died, or **[(6)]** (F) in the month prior to the month of her marriage to him **[(A)]** (i) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, **[(B)]** (ii) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or **[(C)]** (iii) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow’s, child’s (after attainment of age 18), or parent’s insurance annuity under section 2 of the Railroad Retirement Act of 1974, as amended.

(2) *The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—*

(A) the individual had been married prior to the individual’s marriage to the surviving wife,

(B) the prior wife was institutionalized during the individual’s marriage to the prior wife due to mental incompetence or similar incapacity,

(C) during the period of the prior wife’s institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife’s institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

(D) the prior wife continued to remain institutionalized up to the time of her death, and

(E) the individual married the surviving wife within 60 days after the prior wife's death.

* * * * *

Widower

(g)(1) The term “widower” (except when used in the first sentence of section 202(i)) means the surviving husband of an individual, but only if [(1)] (A) he is the father of her son or daughter, [(2)] (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, [(3)] (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, [(4)] (D) he was married to her at the time both of them legally adopted a child under the age of eighteen, [(5)] (E) *except as provided in paragraph (2)*, married to her for a period of not less than nine months immediately prior to the day on which she died, or [(6)] (F) in the month before the month of his marriage to her [(A)] (i) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 202, [(B)] (ii) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or [(C)] (iii) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974, as amended.

(2) *The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—*

(A) the individual had been married prior to the individual's marriage to the surviving husband,

(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

(D) the prior husband continued to remain institutionalized up to the time of his death, and

(E) the individual married the surviving husband within 60 days after the prior husband's death.

* * * * *

Waiver of Nine-Month Requirement for Widow, Stepchild, or Widower in Case of Accidental Death or in Case of Serviceman Dying in Line of Duty, or in Case of Remarriage to the Same Individual

(k) The requirement in **clause (5) of subsection (c) or clause (5) of subsection (g)] clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)** that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if—

(1) * * *

* * * * *

VOLUNTARY AGREEMENTS FOR COVERAGE OF STATE AND LOCAL EMPLOYEES

Purpose of Agreement

SEC. 218. (a) * * *

* * * * *

Positions Covered By Retirement Systems

(d)(1) * * *

* * * * *

(6)(A) * * *

* * * * *

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, *Kentucky*, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after the date of enactment of this subparagraph, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the

division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

* * * * *

REHABILITATION SERVICES

Referral for Rehabilitation Services

SEC. 222. (a) * * *

* * * * *

Period of Trial Work

(c)(1) * * *

* * * * *

(5) *Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—*

(A) *providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;*

(B) *receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or*

(C) *taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,*

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.

* * * * *

DEMONSTRATION PROJECT AUTHORITY

SEC. 234. (a) * * *

* * * * *

(c) **AUTHORITY TO WAIVE COMPLIANCE WITH BENEFITS REQUIREMENTS.**—In the case of any experiment or demonstration project **【conducted under subsection (a)】** *initiated under subsection (a) on or before December 17, 2004*, the Commissioner may waive compliance with the benefit requirements of this title and the requirements of section 1148 as they relate to the program established under this title, and the Secretary may (upon the request of the Commissioner) waive compliance with the benefits requirements of title XVIII, insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

(d) **REPORTS.**—

(1) * * *

(2) **TERMINATION AND FINAL REPORT.**—**【The authority under the preceding provisions of this section (including any waiver granted pursuant to subsection (c)) shall terminate 5 years after the date of the enactment of this Act.】** *The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2004.* Not later than 90 days after the termination of any experiment or demonstration project carried out under this section, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to that experiment or demonstration project.

* * * * *

TITLE VII—ADMINISTRATION

* * * * *

SOCIAL SECURITY ADVISORY BOARD

Establishment of Board

SEC. 703. (a) * * *

* * * * *

【Expenses and Per Diem

【(f) Members of the Board shall serve without compensation, except that, while serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.】

Compensation, Expenses, and Per Diem

(f) A member of the Board shall, for each day (including travel-time) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

* * * * *

ADMINISTRATIVE DUTIES OF THE COMMISSIONER

Personnel

SEC. 704. (a) * * *

Budgetary Matters

(b)(1) * * *

* * * * *

(3)(A) Except as provided in subparagraph (B), amounts received by the Social Security Administration pursuant to an order of restitution under section 208(b), 807(i), or 1632(b) shall be credited to a special fund established in the Treasury of the United States for amounts so received or recovered. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out titles II, VIII, and XVI.

(B) Subparagraph (A) shall not apply with respect to amounts received in connection with misuse by a representative payee (within the meaning of sections 205(j), 807, and 1631(a)(2)) of funds paid as benefits under title II, VIII, or XVI. Such amounts received in connection with misuse of funds paid as benefits under title II shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund. All other such amounts shall be deposited by the Commissioner into the general fund of the Treasury as miscellaneous receipts.

* * * * *

TITLE VIII—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

* * * * *

SEC. 807. REPRESENTATIVE PAYEES.

(a) IN GENERAL.—If the Commissioner of Social Security determines that the interest of any qualified individual under this title would be served thereby, payment of the qualified individual's benefit under this title may be made, regardless of the legal com-

petency or incompetency of the qualified individual, either directly to the qualified individual, or **for his or her benefit** *for his or her use and benefit*, to another person (the meaning of which term, for purposes of this section, includes an organization) with respect to whom the requirements of subsection (b) have been met (in this section referred to as the qualified individual's "representative payee"). If the Commissioner of Social Security determines that a representative payee has misused any benefit paid to the representative payee pursuant to this section, section 205(j), or section 1631(a)(2), the Commissioner of Social Security shall promptly revoke the person's designation as the qualified individual's representative payee under this subsection, and shall make payment to an alternative representative payee or, if the interest of the qualified individual under this title would be served thereby, to the qualified individual.

(b) EXAMINATION OF FITNESS OF PROSPECTIVE REPRESENTATIVE PAYEE.—

(1) * * *

(2) As part of the investigation referred to in paragraph (1), the Commissioner of Social Security shall—

(A) * * *

* * * * *

(C) determine whether the person has been convicted of a violation of section 208, 811, or 1632; **and**

(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(E) obtain information concerning whether such person is a person described in section 804(a)(2); and

[(D)] *(F) determine whether payment of benefits to the person in the capacity as representative payee has been revoked or terminated pursuant to this section, section 205(j), or section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title, title II, or XVI, respectively.*

(3) *Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—*

(A) such person is described in section 804(a)(2),

(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

(C) the location or apprehension of such person is within the officer's official duties.

* * * * *

(d) PERSONS INELIGIBLE TO SERVE AS REPRESENTATIVE PAYEES.—

(1) IN GENERAL.—The benefits of a qualified individual may not be paid to any other person pursuant to this section if—

(A) * * *

(B) except as provided in paragraph (2), payment of benefits to the person in the capacity of representative payee has been revoked or terminated under this section, section 205(j), or section 1631(a)(2)(A)(ii) by reason of misuse of funds paid as benefits under this title, title II, or title XVI, respectively; **[or]**

(C) except as provided in paragraph (2)(B), the person is a creditor of the qualified individual and provides the qualified individual with goods or services for consideration**[.]**;

(D) *such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or*

(E) *such person is a person described in section 804(a)(2).*

* * * * *

(h) ACCOUNTABILITY MONITORING.—

(1) * * *

* * * * *

(3) **AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.**—*In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.*

[(3)] (4) MAINTAINING LISTS OF PAYEES.—The Commissioner of Social Security shall maintain lists which shall be updated periodically of—

(A) * * *

* * * * *

[(4)] (5) MAINTAINING LISTS OF AGENCIES.—The Commissioner of Social Security shall maintain lists, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this section and which are located in the jurisdiction in which any qualified individual resides.

(i) **[RESTITUTION.—In any case where]**(i) **RESTITUTION.**—

(1) **IN GENERAL.**—*In any case where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall*

make payment to the qualified individual or the individual's alternative representative payee of an amount equal to the misused benefits. *In any case in which a representative payee that—*

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (1)(2). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(2) COURT ORDER FOR RESTITUTION.—

(A) IN GENERAL.—Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

(B) RELATED PROVISIONS.—Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this paragraph. In so applying such sections, the Social Security Administration shall be considered the victim.

(C) STATED REASONS FOR NOT ORDERING RESTITUTION.—If the court does not order restitution, or orders only partial restitution, under this paragraph, the court shall state on the record the reasons therefor.

(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term “use and benefit” for purposes of this subsection.

(k) PERIODIC ONSITE REVIEW.—(1) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

(2) *Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—*

(A) the number of such reviews;

(B) the results of such reviews;

(C) the number of cases in which the representative payee was changed and why;

(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(E) the number of cases discovered in which there was a misuse of funds;

(F) how any such cases of misuse of funds were dealt with by the Commissioner;

(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(H) such other information as the Commissioner deems appropriate.

(I) LIABILITY FOR MISUSED AMOUNTS.—

(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

(2) LIMITATION.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

* * * * *

TITLE XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

* * * * *

PART A—GENERAL PROVISIONS

* * * * *

SEC. 1129. CIVIL MONETARY PENALTIES AND ASSESSMENTS FOR TITLES II, VIII AND XVI.

(a)(1) Any person (including an organization, agency, or other entity) **who** makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

[(A) monthly insurance benefits under title II,

[(B) benefits or payments under title VIII, or

[(C) benefits or payments under title XVI,

that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to, **who—**

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1128, such a person who is a medical provider or physician from participation in the programs under title XVIII.

* * * * *

(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money

penalty of not more than \$5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

(b)(1) * * *

* * * * *

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime [charging fraud or false statements]; and

* * * * *

(c) In determining pursuant to subsection (a) the amount or scope of any penalty or assessment, or whether to recommend and exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements [and representations], *representations, or actions* referred to in subsection (a) and the circumstances under which they occurred;

* * * * *

(e)(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—

(A) in a civil action in the name of the United States brought in United States district court for the district where the [statement or representation referred to in subsection (a) was made] *violation occurred*, or where the person resides, as determined by the Commissioner of Social Security;

* * * * *

(2) Amounts recovered under this section shall be recovered under by the Commissioner of Social Security and shall be disposed of as follows:

(A) * * *

(B) [In the case of amounts recovered arising out of a determination relating to title VIII or XVI,] *In the case of any other amounts recovered under this section*, the amounts shall be deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

* * * * *

SEC. 1129A. ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES FOR FALSE OR MISLEADING STATEMENTS.

(a) IN GENERAL.—Any person [who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

[(1) monthly insurance benefits under title II; or

(2) benefits or payments under title XVI,

that the person knows or should know is false or misleading or knows or should know omits a material fact or who makes such a statement with knowing disregard for the truth shall be subject to,] *who—*

(1) *makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or con-*

tinuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI that the person knows or should know is false or misleading,

(2) makes such a statement or representation for such use with knowing disregard for the truth, or

(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) to be imposed by the Commissioner of Social Security.

* * * * *

ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than \$5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than \$3,000, imprisoned not more than 1 year, or both. In this subsection, the term "threats of force" means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.

* * * * *

[PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE] PROHIBITIONS RELATING TO REFERENCES TO SOCIAL SECURITY OR MEDICARE

SEC. 1140. (a)(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication, or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—

(A) the words "Social Security", "Social Security Account", "Social Security System", "Social Security Administration", "Medicare", "Health Care Financing Administration", "Centers for Medicare & Medicaid Services", "Department of Health and Human Services", "Health and Human Services", "Supplemental Security Income Program", [or "Medicaid",] "Medicaid", "Death Benefits Update", "Federal Benefit Information",

“Funeral Expenses”, or “Final Supplemental Plan”, the letters “SSA”, “HCFA”, “CMS”, “DHHS”, “HHS”, or “SSI”, or any other combination or variation of such words or letters, or

(B) a symbol or emblem of the Social Security Administration, Health Care Financing Administration, *Centers for Medicare & Medicaid Services*, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 205(c)(2)(F), or the Medicare card the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration, Health Care Financing Administration, *Centers for Medicare & Medicaid Services*, or Department of Health and Human Services) or any other combination or variation of such symbols or emblems,

in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, [the Health Care Financing Administration,] *the Centers for Medicare & Medicaid Services*, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, [the Health Care Financing Administration,] *the Centers for Medicare & Medicaid Services*, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

* * * * *

(4)(A) *No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—*

(i) explains that the product or service is available free of charge from the Social Security Administration, and

(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

(B) *Subparagraph (A) shall not apply to any offer—*

(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.

* * * * *

SOCIAL SECURITY ACCOUNT STATEMENTS

Provision Upon Request

SEC. 1143. (a)(1) Beginning not later than October 1, 1990, the **【Secretary】 Commissioner of Social Security** shall provide upon the request of an eligible individual a social security account statement (hereinafter referred to as the “statement”).

(2) Each statement shall contain—

(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the **【Secretary】 Commissioner** at the date of the request;

(B) an estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the **【Secretary】 Commissioner** on the date of the request;

(C) a separate estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the **【Secretary】 Commissioner** on the date of the request; and

* * * * *

Notice to Eligible Individuals

(b) The **【Secretary】 Commissioner** shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a).

Mandatory Provision of Statements

(c)(1) By not later than September 30, 1995, the **【Secretary】 Commissioner** shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under title II and for whom a current mailing address can be determined through such methods as the **【Secretary】 Commissioner** determines to be appropriate. In fiscal years 1995 through 1999 the **【Secretary】 Commissioner** shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under title II and for whom a current mailing address can be determined through such methods as the **【Secretary】 Commissioner** determines to be appropriate. The **【Secretary】 Commissioner** shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

(2) Beginning not later than October 1, 1999, the **【Secretary】 Commissioner** shall provide a statement on an annual basis to each eligible individual who is not receiving benefits under title II and for whom a mailing address can be determined through such methods as the **【Secretary】 Commissioner** determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such state-

ments shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.

* * * * *

THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

SEC. 1148. (a) * * *

* * * * *

(g) INDIVIDUAL WORK PLANS.—

(1) REQUIREMENTS.—Each employment network shall—

(A) * * *

* * * * *

An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.

* * * * *

WORK INCENTIVES OUTREACH PROGRAM

SEC. 1149. (a) * * *

* * * * *

(c) DEFINITIONS.—In this section:

(1) * * *

[(2) DISABLED BENEFICIARY.—The term “disabled beneficiary” has the meaning given that term in section 1148(k)(2).]

(2) *DISABLED BENEFICIARY.*—*The term “disabled beneficiary” means an individual—*

(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.

* * * * *

STATE GRANTS FOR WORK INCENTIVES ASSISTANCE TO DISABLED BENEFICIARIES

SEC. 1150. (a) * * *

(b) SERVICES PROVIDED.—Services provided to disabled beneficiaries pursuant to a payment made under this section may include—

(1) * * *

(2) advocacy or other services that a disabled beneficiary may need to **[secure or regain]** *secure, maintain, or regain* gainful employment.

* * * * *

(g) DEFINITIONS.—In this section:

(1) * * *

[(2) DISABLED BENEFICIARY.—The term “disabled beneficiary” has the meaning given that term in section 1148(k)(2).]

(2) *DISABLED BENEFICIARY.—The term “disabled beneficiary” means an individual—*

(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.

* * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * *

PART A—DETERMINATION OF BENEFITS

* * * * *

RESOURCES

Exclusions From Resources

SEC. 1613. (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) * * *

* * * * *

(12) any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1631(a)(2)(F); **[and]**

(13) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) * * *

(B) in the case of a cash gift, only to the extent that the total amount excluded from the resources of the individual

pursuant to this paragraph in the calendar year in which the gift is made does not exceed \$2,000[.]; and

(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.

* * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) * * *

(2)(A)(i) * * *

(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term “use and benefit” for purposes of this clause.

(B)(i) * * *

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) * * *

* * * * *

(III) determine whether such person has been convicted of a violation of section 208, 811, or 1632; [and]

(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(V) obtain information concerning whether such person is a person described in section 1611(e)(4)(A); and

[(IV)] (VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 807(a), and whether certification of payment of benefits to such person has been revoked pursuant to section 205(j), by reason of misuse of funds paid as benefits under title II, title VIII, or this title.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) * * *

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in [clause (ii)(IV)] clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 807(a), or certification of payment of benefits to such person under section 205(j) has pre-

viously been revoked as described in [section 205(j)(2)(B)(i)(IV)] *section 205(j)(2)(B)(i)(VI)*; [or]

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration[.];

(IV) *the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or*

(V) *such person is a person described in section 1611(e)(4)(A).*

* * * * *

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) [a community-based nonprofit social service agency licensed or bonded by the State] *a certified community-based nonprofit social service agency (as defined in subparagraph (I))*;

* * * * *

(xiv) *Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—*

(I) such person is described in section 1611(e)(4)(A),

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) * * *

* * * * *

(v) *In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.*

(D)(i) [A] *Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—*

(I) * * *

* * * * *

【The Commissioner】 *A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A), except that any amount so adjusted that is not a multiple of \$1.00 shall be rounded to the nearest multiple of \$1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.*

(ii) For purposes of this subparagraph, the term “qualified organization” means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, **【**or any community-based nonprofit social service agency, which—

【(I) is bonded or licensed in each State in which the agency serves as a representative payee; and

【(II) in accordance】 *or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance with any applicable regulations of the Commissioner of Social Security—*

【(aa)】 *(I) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 205(j)(4) or 807 concurrently to 5 or more individuals; and*

【(bb)】 *(II) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.*

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from **【subclause (II)(bb)】** *subclause (II)* for any individual on a case-by-case basis if such exception is in the best interests of such individual.

* * * * *

(E) **RESTITUTION.**—In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. *In any case in which a representative payee that—*

(i) is not an individual (regardless of whether it is a “qualified organization” within the meaning of subparagraph (D)(ii));
or

(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to the representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

* * * * *

[(G) The Commissioner of Social Security shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including—

[(i) the number of cases in which the representative payee was changed;

[(ii) the number of cases discovered where there has been a misuse of funds;

[(iii) how any such cases were dealt with by the Commissioner of Social Security;

[(iv) the final disposition of such cases (including any criminal penalties imposed); and

[(v) such other information as the Commissioner of Social Security determines to be appropriate.

[(H) The Commissioner of Social Security shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subparagraph. The Commissioner of Social Security shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Commissioner's report under section 205(j)(4)(B).]

(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(10)); or

(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted dur-

ing the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

- (I) the number of the reviews;
- (II) the results of such reviews;
- (III) the number of cases in which the representative payee was changed and why;
- (IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;
- (V) the number of cases discovered in which there was a misuse of funds;
- (VI) how any such cases of misuse of funds were dealt with by the Commissioner;
- (VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and
- (VIII) such other information as the Commissioner deems appropriate.

(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(I) For purposes of this paragraph, the term "certified community-based nonprofit social service agency" means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

* * * * *

Procedures; Prohibitions of Assignments; Representation of
Claimants

(d)(1) * * *

(2)(A) The provisions of section 206[(a) (other than paragraph (4) thereof)] *(other than subsections (a)(4) and (d) thereof)* shall apply to this part to the same extent as they apply in the case of title II, except that [paragraph (2) thereof] *such section* shall be applied—

(i) by substituting, [in subparagraphs (A)(ii)(I) and (C)(i),] *in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2) the phrase “(as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a))” for the parenthetical phrase contained therein; [and*

[(ii) by substituting “section 1631(a)(7)(A) or the requirements of due process of law” for “subsection (g) or (h) of section 223”.

[(B) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.]

(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase “section 1631(a)(7)(A) or the requirements of due process of law” for the phrase “subsection (g) or (h) of section 223”;

(iii) by substituting, in subsection (a)(2)(C)(i), the phrase “under title II” for the phrase “under title XVI”;

(iv) by substituting, in subsection (b)(1)(A), the phrase “pay the amount of such fee” for the phrase “certify the amount of such fee for payment” and by striking, in subsection (b)(1)(A), the phrase “or certified for payment”; and

(v) by substituting, in subsection (b)(1)(B)(ii), the phrase “deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)” for the phrase “determined before any applicable reduction under section 1127(a))”.

(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subpara-

graph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed \$75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.

(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(v) Assessments on attorneys collected under this subparagraph shall be deposited in the Treasury in a separate fund created for this purpose.

(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.

* * * * *

PENALTIES FOR FRAUD

SEC. 1632. (a) * * *

(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Social Security Administration shall be considered the victim.

(3) *If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.*

[(b)] (c)(1) * * *

* * * * *

SECTION 302 OF THE TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999

SEC. 302. DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

(a) * * *

* * * * *

(c) **WAIVERS.**—The Commissioner may waive compliance with the benefit provisions of title II of the Social Security Act [(42 U.S.C. 401 et seq.),] (42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act, and the Secretary of Health and Human Services may waive compliance with the benefit requirements of title XVIII of such Act (42 U.S.C. 1395 et seq.), insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

* * * * *

[(f)] **EXPENDITURES.**—Expenditures made for demonstration projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, to the extent provided in advance in appropriation Acts.]

(f) **EXPENDITURES.**—*Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the*

Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * *

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

* * * * *

SEC. 1401. RATE OF TAX.

(a) * * *

* * * * *

(c) **RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.**—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement [to taxes or contributions for similar purposes under] *exclusively to the laws applicable to the social security system of such foreign country.*

SEC. 1402. DEFINITIONS.

(a) **NET EARNINGS FROM SELF-EMPLOYMENT.**—The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) * * *

* * * * *

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, [all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and] *the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business*

or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and

* * * * *

Subtitle C—Employment Taxes

* * * * *

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

* * * * *

Subchapter A—Tax on Employees

* * * * *

SEC. 3101. RATE OF TAX.

(a) * * *

* * * * *

(c) **RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.**—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement **to taxes or contributions for similar purposes under** *exclusively to the laws applicable to the social security system of such foreign country.*

* * * * *

SEC. 3102. DEDUCTION OF TAX FROM WAGES

(a) **REQUIREMENT.**—The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x) for such year; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than \$100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remunera-

tion paid to the employee by the employer in the calendar year is less than \$150 [and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis]; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20.

* * * * *

Subchapter B—Tax on Employers

* * * * *

SEC. 3111. RATE OF TAX.

(a) * * *

* * * * *

(c) RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement [to taxes or contributions for similar purposes under] *exclusively to the laws applicable to the social security system of such foreign country.*

* * * * *

Subchapter C—General Provisions

* * * * *

SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term “wages” means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) * * *

* * * * *

(7)(A) * * *

(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service [described in subsection (g)(5)] *on a farm operated for profit*), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in subsection (x)) for such year;

* * * * *

(g) AGRICULTURAL LABOR.—For purposes of this chapter, the term “agricultural labor” includes all service performed—

(1) * * *

* * * * *

(5) on a farm operated for profit if such service is not in the course of the employer’s trade or business **【**or is domestic service in a private home of the employer**】**.

* * * * *

